

FRIDAY, FEBRUARY 10, 1978



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highlights

SUNSHINE ACT MEETINGS 5914

CHILD NUTRITION

USDA/FNS assigns food service equipment assistance funds among States for fiscal year 1978; effective 1-31-78 5794

DOMESTIC CRUDE OIL ALLOCATION ("ENTITLEMENT") PROGRAM

DOE/ERA solicits comments by 3-7-78 and announces hearings on 3-6, 3-7, and 3-9-78 on an independent study of small refiner bias 5870

DOMESTIC HOPS

USDA/AMS proposes to establish quantity that may be freely marketed from the 1978 crop; comments by 2-28-78 5841

ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECT

DOE solicits comments by 3-17-78 and announces hearing on 3-9-78 on intent to establish performance standards 5841

EMPLOYEE RETIREMENT BENEFIT PLANS

Treasury/IRS proposes regulations relating to filing of annual returns; comments by 3-27-78 5854

EMPLOYMENT OF HANDICAPPED CLIENTS

Labor/W&H increases the monetary tests for qualifying as a Work Activities Center; effective 3-13-78 5818

EXCHANGE-VISITOR SKILLS LIST

State/Consular Affairs publishes revision affecting participants in special programs 5910

FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

Labor/ESA issues general wage determination decisions (Part III of this issue) 5972

FEDERAL LAND POLICY AND MANAGEMENT

USDA/FS implements the National Forest townsite provisions in eleven Western States and Alaska; effective 2-10-78 5821

FISHERY CONSERVATION AND MANAGEMENT

State publishes applications by governments of Korea, Japan, and Mexico to fish off coasts of U.S. (Part IV of this issue) 6008

FLOOD PLAIN MANAGEMENT

Water Resources Council issues implementation guidelines (Part VI of this issue) 6030

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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FEDERAL REGISTER, Daily Issue:-

Subscription orders (GPO).....	202-783-3238
Subscription problems (GPO).....	202-275-3050
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202-523-5022
Scheduling of documents for publication.	523-3187
Copies of documents appearing in the Federal Register.	523-5240
Corrections	523-5237
Public Inspection Desk.....	523-5215
Finding Aids.....	523-5227
Public Briefings: "How To Use the Federal Register."	523-3517
Code of Federal Regulations (CFR).....	523-3419
	523-3517
Finding Aids.....	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5286
Weekly Compilation of Presidential Documents.	523-5284
Public Papers of the Presidents....	523-5285
Index	523-5285

PUBLIC LAWS:

Public Law dates and numbers.....	523-5266
	523-5282
Slip Laws.....	523-5266
	523-5282
U.S. Statutes at Large.....	523-5266
	523-5282
U.S. Government Manual.....	523-5287
Automation	523-5240
Special Projects.....	523-4534

HIGHLIGHTS—Continued

FOOD ADDITIVES

HEW/FDA notice of petition for safe use of a flexible laminated pouch intended to contact food under retort conditions..... **5891**

GRANTS

HEW/HSA announces closing dates for competitive grant applications in fiscal year 1978 for Sudden Infant Death Syndrome Program by 4-1-78 and Specialized Training in Maternal and Child Health of Several Categories of Health Professionals by 3-31-78 (2 documents)..... **5891, 5892**

HEALTH MAINTENANCE ORGANIZATIONS

HEW/PHS amends requirements for entities requesting Federal financial assistance for feasibility surveys, planning, and initial development, and initial operating costs; effective 2-10-78 (Part V of this issue)..... **6020**

IMPORTATION OF CERAMIC TILE SETTERS

ITC institutes an investigation regarding alleged unfair methods of competition and unfair act..... **5891**

INCOME TAX

Treasury/IRS proposes regulations relating to custodial accounts for regulated investment company stock; comments by 3-27-78..... **5852**

INSURANCE FOR THE AGED AND DISABLED

HEW provides for reimbursement of reinsurance costs for risk-basis Health Maintenance Organizations; effective 2-10-78 ... **5822**

LEARNERS IN CERTAIN INDUSTRIES

Labor/W&H increases the subminimum wage rates; effective 3-13-78..... **5816**

MANDATORY PETROLEUM PRICE REGULATIONS

DOE/ERA amends its regulations regarding computation of landed costs: Timing; effective 3-1-78..... **5799**

MANAGEMENT ASSISTANCE PROGRAM

SBA prescribes various types available to new or prospective small business owner/manager; effective 2-10-78..... **5801**

OCCUPATIONAL EXPOSURE TO BENZENE

Labor/OSHA issues permanent occupational safety and health standards; effective 3-13-78 (Part II of this issue)..... **5918**

OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Interior/BLM gives notice to bidders of consideration to use cash bonus bidding system with royalty rates fixed according to a predetermined schedule..... **5900**

RADIO AND TELEVISION BROADCASTING

SBA proposes to establish financial assistance eligibility criteria; comments by 3-13-78..... **5846**

SACCHARIN

HEW/FDA proposes to require vending machines dispensing food containing saccharin to bear a warning statement; comments by 3-13-78..... **5851**

SPECIAL EMERGENCY RADIO SERVICE

FCC permits one-way paging operations; effective 3-20-78.... **5831**

STATE MEDICAID CONTRACTS

HEW/HCFR revises requirements for health maintenance organizations and other health care contractors; effective 2-10-78; comments by 4-11-78..... **5823**

HIGHLIGHTS—Continued

VETERANS BENEFITS

VA proposes to amend its regulations to indicate that service in the Women's Air Forces Service Pilots (WASP) during World War II or similar group, may be considered active service when so certified by DOD; comments by 3-13-78..... 5856

MEETINGS—

DOE: Industry Advisory Board to the International Energy Agency, 2-16 and 2-17-78 5878
 FERC: Gas Policy Advisory Council, 3-2-78 5876
 FCC: Broadcast Service Working Groups, 1979 World Administrative Radio Conference, 3-1-78 5887
 HEW: Rights and Responsibilities of Women Advisory Committee (2 documents), 2-27 and 2-28-78 5896
 ADAMHA: Advisory Committees, 3-22, 3-30, and 3-31-78 5890
 NIH: Aging Review Committee, 3-24-78 5893
 Allergy and Clinical Immunology Research Committee, 3-6-78 5893
 Biomedical Library Review Committee, 3-20 and 3-21-78 5893
 Contract Proposals and Grant Applications Review, 3-6 and 3-7, 3-9, 3-13 through 3-16, 3-20, 3-23 and 3-24, and 3-29 through 4-1-78 5894
 Microbiology and Infectious Diseases Advisory Committee, 3-6-78 5895
 Cancer Immunotherapy Committee, 3-2, 3-9, 3-13, 3-16, and 3-30-78 5895

Clinical Applications and Prevention Advisory Committee, 3-23-78 5893
 HUD: Tenant Participation in the Management of Low-Income Public Housing Task Force, 2-26-78 5897
 NSF: Anthropology of the Advisory Committee for Behavioral and Neural Sciences Subcommittee, 3-1 through 3-4-78 5906
 Metabolic Biology Subcommittee, 2-27 and 2-28-78 5907
 Science and Technology Policy Office: Basic Research in the Department of Energy Working Group, 2-26 through 2-28-78 5908
 Intergovernmental Science, Engineering, and Technology Advisory Panel, 3-1 and 3-2-78 5908
 VA: Educational Allowances Station Committee, 3-2-78 5912

RESCHEDULED MEETING—

Labor/ETA: Equal Apprenticeship Opportunity Subcommittee, Federal Committee on Apprenticeship, 2-27-78 5905

PUBLIC HEARING—

ITC: Draft Chapters of the Harmonized Commodity Description and Coding System, 3-1-78 5902

SEPARATE PARTS OF THIS ISSUE

Part II, Labor/OSHA 5918
 Part III, Labor/ESA 5972
 Part IV, State 6008
 Part V, HEW/PHS 6020
 Part VI, Water Resources Council 6030

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

ICC—Exception to competitive rate level standards in connection with short notice authority to establish temporary authority rates.
 65184; 12-30-77, 1625; 1-11-78
 Library of Congress/CO—Compulsory license for cable systems 958; 1-5-78

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

H.R. 10532 Pub. L. 95-226
 To amend Public Law 95-18, providing for emergency drought relief measures. (Feb. 7, 1978; 92 Stat. 10) Price: \$.50.

contents

ACTUARIES, JOINT BOARD FOR ENROLLMENT

- Notices
Advisory committee review; inquiry 5903

AGRICULTURAL MARKETING SERVICE

- Rules
Lemons grown in Ariz. and Calif. 5796
- Proposed Rules
Hops of domestic production 5841

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food and Nutrition Service; Forest Service; Packers and Stockyards Administration; Rural Electrification Administration.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

- Notices
Meetings:
Advisory Committees; March.. 5890

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

- Rules
Livestock and poultry quarantine:
Scabies in cattle 5796

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM

- Notices
Procurement list, 1978; additions and deletions (2 documents) 5860, 5861

CIVIL SERVICE COMMISSION

- Rules
Equal opportunity:
Age group coverage, nondiscrimination 5794
- Excepted service:
Community Services Administration 5793
- Health, Education, and Welfare Department and Securities and Exchange Commission 5793
- Excepted service; miscellaneous revocations 5793
- Notices
Noncareer executive assignments:
Agriculture Department 5860

CONSUMER PRODUCT SAFETY COMMISSION

- Rules
Meetings; public notice, attendance, and recordkeeping:
Confidential procurement and potential litigation matters; pre-proposal conferences; advance notice requirements exemption 5803

ECONOMIC REGULATORY ADMINISTRATION

- Rules
Administrative procedures and sanctions; oil:
Interpretations 5797
- Petroleum price regulations, mandatory:
Landed costs computation; timing 5799

Notices

- Appeals and applications for exception, etc.; cases filed with Administrative Review Office:
List of applicants, etc. (3 documents) 5861, 5864, 5867
- Crude Oil, domestic, allocation program; small refiner bias under entitlement program; inquiry 5870
- Hearings, etc.:
Southeastern Power Administration 5861

EMPLOYMENT AND TRAINING ADMINISTRATION

- Notices
Employment transfer and business competition determinations; financial assistance applications 5904
- Meetings:
Apprenticeship Federal Committee, Equal Apprenticeship Opportunity Subcommittee; rescheduled 5905

EMPLOYMENT STANDARDS ADMINISTRATION

- Notices
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions:
Alabama et al 5972

ENERGY DEPARTMENT

See also Economic Regulatory Administration; Federal Energy Regulatory Commission.

Proposed Rules

- Electric and hybrid vehicle research, development, and demonstration project; performance standards 5841

Notices

- Meetings:
International Energy Agency Industry Advisory Board 5878

ENVIRONMENTAL PROTECTION AGENCY

Proposed Rules

- Pesticide programs:
Registration guidelines; Agriculture Secretary notification 5857

Notices

- Air quality criteria; external review drafts; availability:
Photochemical oxidants, organic 5884
- Environmental statements; availability of agency comments 5879
- Pesticides; tolerances, registration, etc.:
BAAM (Amitroz) 5884

FEDERAL COMMUNICATIONS COMMISSION

Rules

- Public safety radio services:
Emergency radio service; special one-way paging operations 5831

Notices

- Advisory committee review; inquiry 5886
- Domestic public radio services; applications accepted for filing 5887
- Satellite communications services; applications accepted for filing 5888
- World Administrative Radio Conference 5887

FEDERAL ENERGY REGULATORY COMMISSION

Notices

- Meetings:
Gas Policy Advisory Council .. 5876
- Hearings, etc.:
Central Telephone & Utilities Corp 5873
- El Paso Natural Gas Co 5874
- Florida Power & Light Co 5876
- Holyoke Water Power Co. et al 5876
- Kansas Power & Light Co 5877
- Kansas-Nebraska Natural Gas Co., Inc 5877
- Nevada Power Co 5877
- Potomac Electric Power Co 5878
- Public Service Co. of Oklahoma 5878

CONTENTS

FEDERAL INSURANCE ADMINISTRATION

Rules	
Flood elevation determinations:	
Maryland	5807
Massachusetts (2 documents)	5807, 5808
Michigan (3 documents) ..	5808, 5809
Mississippi (2 documents)	5810
Missouri (4 documents)	5811, 5812
New Hampshire (3 documents)	5813, 5814
New Jersey	5815
New York (2 documents) ..	5815, 5816
Flood insurance, communities eligible for sale:	
Colorado et al	5804

FEDERAL RESERVE SYSTEM

Notices	
<i>Applications, etc.:</i>	
First Steuben Bancorp, Inc.	5889
Gibson Bancshares Corp	5889
Home State Bancshares, Inc.	5889
Mizrahi Holdings Association et al	5889
Royal Trust Bank Corp. et al.	5890

FEDERAL TRADE COMMISSION

Rules	
Procedures and practice rules:	
Freedom of information; records disclosure requests	5802
Prohibited trade practices:	
Ryder Systems, Inc	5802
Proposed Rules	
Consent orders:	
Insilco Corp. et al	5846

FISH AND WILDLIFE SERVICE

Notices	
Endangered and threatened species permits; applications (4 documents)	5900, 5901

FOOD AND DRUG ADMINISTRATION

Proposed Rules	
Food for human consumption:	
Saccharin; warning statements on vending machines	5851
Radiological health:	
Sunlamp products; performance standards; correction; republication	5852
Notices	
Food additives, petitions filed or withdrawn:	
DeSoto, Inc	5891
Meetings:	
Advisory committees, panels, etc.; correction	5890

FOOD AND NUTRITION SERVICE

Rules	
Child nutrition; nonfood assistance programs:	
Funds, initial apportionment for 1978 fiscal year	5794

FOREST SERVICE

Rules	
Landownership; National forest townsites	5821
Notices	
Environmental statements; availability, etc.:	
Mt. Hood National Forest, Badger-Jordan Land Management Plan, Ore	5859
Six Rivers National Forest, Gasquet-Orleans Road, Calif; extension of time	5859

GENERAL SERVICES ADMINISTRATION

Notices	
Public buildings and space; redesignation of Federal building in Beaumont, Tex	5890

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

<i>See also</i> Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; Health Resources Administration; Health Services Administration; National Institutes of Health; Public Health Service.	
Notices	
Meetings:	
Women, Secretary's Advisory Committee on Rights and Responsibilities of (2 documents)	5896

HEALTH CARE FINANCING ADMINISTRATION

Rules	
Aged and disabled health insurance and medical assistance programs:	
Grievance procedure requirements and State Medicaid contracts; health maintenance organizations	5823
Aged and disabled, health insurance for:	
Health maintenance organizations, reimbursement of reinsurance costs for risk-basis	5822

HEALTH RESOURCES ADMINISTRATION

Notices	
Health service areas:	
Population determination; correction	5891

HEALTH SERVICES ADMINISTRATION

Notices	
Grants availability:	
Maternal and child health training in institutions of higher learning	5891

Sudden infant death syndrome program	5892
--	------

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

<i>See also</i> Federal Insurance Administration.	
Notices	
Meetings:	
Tenant Participation in Management of Low-Income Public Housing Task Force ..	5897

INTERIOR DEPARTMENT

<i>See</i> Fish and Wildlife Service; Land Management Bureau.	
---	--

INTERNAL REVENUE SERVICE

Proposed Rules	
Income taxes:	
Custodial accounts, regulated investment company stock ..	5852
Income taxes and procedure and administration:	
Employee retirement benefit plans; annual returns	5854

INTERNATIONAL TRADE COMMISSION

Notices	
Harmonized commodity description and coding system; draft; inquiry and hearing	5902
Import investigations:	
Tile setters, certain ceramic	5901

INTERSTATE COMMERCE COMMISSION

Rules	
Rail carriers:	
Gondolas, incentive per diem rate; effective date stayed	5835
Railroad car service orders; various companies:	
Chicago & North Western Transportation Co	5834
Revenue levels, standards and procedures for establishment; practice rules	5836
Proposed Rules	
Practice rules:	
Price competition among practitioners; advertising use	5857
Notices	
Hearing assignments	5912
Water carriers, applications, etc.:	
Knappton Towboat Co	5912

LABOR DEPARTMENT

<i>See also</i> Employment and Training Administration; Employment Standards Administration; Occupational Safety and Health Administration; Wage and Hour Division.	
Notices	
Adjustment assistance:	
U.S. Steel Corp	5905

CONTENTS

LAND MANAGEMENT BUREAU

Notices	
Applications, etc.:	
New Mexico (11 documents) ...	5897-5900
Wyoming	5899
Authority delegations:	
New Mexico State Office Management Services Division, Title and Records Section Chief	5897
Outer Continental Shelf:	
Oil and gas leasing, bidding system and royalty rates	5900
Withdrawal and reservation of lands, proposed, etc.:	
Montana	5897

NATIONAL CREDIT UNION ADMINISTRATION

Rules	
Practice and procedure:	
Grounds for removal orders ...	5800

NATIONAL INSTITUTES OF HEALTH

Notices	
Committees; establishment, renewals, terminations, etc.:	
Bladder and Prostatic Cancer Project Working Cadres, National	5896
Clinical Cancer Program Project and Cancer Center Support Review Committees	5896
Large Bowel and Pancreatic Cancer Project Working Cadres, National	5896
Meetings:	
Aging Review Committee	5893
Allergy and Clinical Immunology Research Committee	5893
Biomedical Library Review Committee	5893
Cancer Immunotherapy Committee	5895
Cancer Institute, National; contract proposals and grant applications review	5894
Clinical Applications and Prevention Advisory Committee	5893
Microbiology and Infectious Diseases Advisory Committee	5895
Primate Plan, National; availability; inquiry	5895

NATIONAL SCIENCE FOUNDATION

Notices	
Meetings:	
Behavioral and Neural Sciences Advisory Committee ...	5906
Physiology, Cellular and Molecular Biology Advisory Committee	5907

NUCLEAR REGULATORY COMMISSION

Notices	
Safety analysis reports, safety evaluation reports; availability, etc.:	
Ebasco Services, Inc	5907
Applications, etc.:	
Northeast Nuclear Energy Co. et al	5908

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Rules	
Health and safety standards:	
Benzene; occupational exposure	5918
State plans for enforcement of standards:	
Hawaii	5819

PACKERS AND STOCKYARDS ADMINISTRATION

Notices	
Posting and deposting of Stockyards:	
Huntsville Livestock Auction, Ark., et al	5859

PUBLIC HEALTH SERVICE

Rules	
Health maintenance organizations	6020

RURAL ELECTRIFICATION ADMINISTRATION

Notices	
Environmental statements; availability, etc.:	
Basin Electric Power Cooperative	5860
Pacific Northwest Generating Co	5860

SCIENCE AND TECHNOLOGY POLICY OFFICE

Notices	
Meetings:	
Basic Research Working Group in Energy Department	5908
Intergovernmental Science, Engineering, and Technology Advisory Panel	5908

SMALL BUSINESS ADMINISTRATION

Rules	
Management assistance:	
Services, scope and delivery ...	5801
Proposed Rules	
Small business size standards:	
Radio and television broadcasting loans; eligibility criteria	5846

Notices

Applications, etc.:	
Merchants Finance Co., Inc ...	5909
Committees; establishment, renewals, terminations, etc.:	
Advisory Councils, Regions I-X; establishment	5909
Disaster areas:	
Kansas	5909
New Jersey	5909
West Virginia	5910

STATE DEPARTMENT

Notices	
Exchange-visitor skills list; revision	5910
Fishing permits, applications:	
Mexico et al	6008

TRANSPORTATION DEPARTMENT

Rules	
Organization, functions, and authority delegations:	
Materials Transportation Bureau, Director	5834

TRANSPORTATION POLICY STUDY, NATIONAL COMMISSION

Notices	
Past accomplishment and future plans, annual review	5907

TREASURY DEPARTMENT

See Internal Revenue Service.

VETERANS ADMINISTRATION

Proposed Rules	
Adjudication; pensions, compensation, dependency, etc.:	
Women's Air Force Service Pilots; eligibility	5856
Notices	
Meetings:	
Educational Allowances Station Committee	5912

WAGE AND HOUR DIVISION

Rules	
Handicapped clients in sheltered workshops, employment:	
Work activities center qualifications; monetary test increases	5818
Learners, employment of:	
Wage rate increases, subminimum; certain industries	5816

WATER RESOURCES COUNCIL

Notices	
Floodplain management, guidelines	6030

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.
A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

5 CFR		16 CFR		36 CFR	
213 (3 documents)	5793	4	5802	254	5821
315	5794	13	5802		
7 CFR		1012	5803	38 CFR	
230	5794	PROPOSED RULES:		PROPOSED RULES:	
910	5796	13	5846	3	5856
PROPOSED RULES:		21 CFR		40 CFR	
991	5841	PROPOSED RULES:		PROPOSED RULES:	
9 CFR		101	5851	162	5857
73	5796	1040	5852	42 CFR	
10 CFR		24 CFR		110	6020
205	5797	1914	5804	405 (2 documents)	5822, 5823
212	5799	1917 (18 documents)	5807-5816	449	5823
PROPOSED RULES:		26 CFR		47 CFR	
1010	5841	PROPOSED RULES:		89	5831
12 CFR		1 (18 documents)	5852, 5854	49 CFR	
747	5800	301	5854	1	5834
13 CFR		29 CFR		1033	5834
129	5801	522	5816	1036	5835
PROPOSED RULES:		525	5818	1109	5836
121	5846	1910	5916	PROPOSED RULES:	
		1952	5819	1100	5857

FEDERAL REGISTER PAGES AND DATES—FEBRUARY

Pages	Date
4245-4412	Feb. 1
4413-4582	2
4583-4844	3
4845-4955	6
4957-5353	7
5355-5494	8
5495-5791	9
5793-6055	10

CUMULATIVE LIST OF PARTS AFFECTED DURING FEBRUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during February.

3 CFR

PROCLAMATIONS:

3279 (Amended by EO 12038)	4957
4548	4413
4549	4583
4550	4961
4551	5495

EXECUTIVE ORDERS:

8526 (Amended by EO 12038)	4957
10127 (Amended by EO 12038) ..	4957
10480 (Amended by EO 12038) ..	4957
10485 (Amended by EO 12038) ..	4957
10865 (Amended by EO 12038) ..	4957
10899 (Amended by EO 12038) ..	4957
11030 (See EO 12038)	4957
11057 (Amended by EO 12038) ..	4957
11177 (Amended by EO 12038) ..	4957
11331 (Amended by EO 12038) ..	4957
11345 (Amended by EO 12038) ..	4957
11371 (Amended by EO 12038) ..	4957
11477 (Amended by EO 12038) ..	4957
11490 (Amended by EO 12038) ..	4957
11578 (Amended by EO 12038) ..	4957
11647 (Amended by EO 12038) ..	4957
11652 (Amended by EO 12038) ..	4957
11658 (Amended by EO 12038) ..	4957
11659 (Amended by EO 12038) ..	4957
11752 (Amended by EO 12038) ..	4957
11761 (Amended by EO 12038) ..	4957
11790 (Amended by EO 12038) ..	4957
11902 (Amended by EO 12038) ..	4957
11912 (Amended by EO 12038) ..	4957
11969 (Amended by EO 12038) ..	4957
12006 (See EO 12037)	4415
12009 (See EO 12038)	4957
12011 (See EO 12037)	4415
12016 (See EO 12037)	4415
12037	4415
12038	4957

MEMORANDUMS:

January 27, 1978	4245
------------------------	------

RECOMMENDATIONS APPROVED BY THE PRESIDENT:

January 26, 1978	4377
------------------------	------

5 CFR

213	4585, 4586, 4963, 5793
302	4964
315	5794

7 CFR

20	5497
46	4964
230	5794
401	4247
724	4966
726	4971
905	5497
907	4417, 4965, 5498
910	4586, 5796
959	4587
971	5499
980	5499

7 CFR—Continued

987	4249
993	5355
1139	4589
1421	5501
1425	4589
1446	5501, 5502
1822	5503
1904	5503, 5504
1955	4417

PROPOSED RULES:

225	4622
730	5003
991	5841
1434	4437
1438	4865
1948	5488

8 CFR

103	5355
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9 CFR

73	4591, 5796
78	4591
94	4594

10 CFR

20	5356
35	4972
205	5797
212	5799

PROPOSED RULES:

19	4865
20	4865
1010	5841

12 CFR

226	4419, 5357
265	4253
523	5358
701	5359
720	5359
747	5800

PROPOSED RULES:

9	5004
208	5006
217	5008
225	5382
545	5010

13 CFR

129	5801
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PROPOSED RULES:

121	5846
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14 CFR

39	4420, 4845, 5505-5507
71	4421, 4422, 4847, 4848, 5507-5510
75	5510
97	5510

PROPOSED RULES:

21	4868, 5522
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14 CFR—Continued

PROPOSED RULES—Continued

36	4868, 5522
71	4437, 5523, 5524
91	4868, 5522
121	4438
207	5383
208	5383
212	5383
214	5383

15 CFR

369	5512
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16 CFR

2	4972
4	5802
13	5360, 5512, 5513, 5802
1012	5803
1615	4849
1616	4849

PROPOSED RULES:

13	5383, 5846
1700	4632

17 CFR

200	4254
211	4972
240	4254, 4342

PROPOSED RULES:

32	4869
210	4264
240	4354

18 CFR

2	5362
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PROPOSED RULES:

141	5524
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19 CFR

10	4855
162	4255, 4595
171	4255

PROPOSED RULES:

153	4871
-----------	------

20 CFR

404	4973
-----------	------

21 CFR

74	4974
81	4596, 4974
82	4974
135	4596
520	4601, 4975
522	4975, 4976
540	4601, 4602
558	4976, 4977

PROPOSED RULES:

101	5851
182	4635
184	4635
333	4637

FEDERAL REGISTER

21 CFR—Continued

PROPOSED RULES—Continued

500	4637
558	5010
701	4638
1040	4871, 5852

23 CFR

130	5513
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24 CFR

570	4382
1914	5804
1917	5807-5816
2205	4255

PROPOSED RULES:

1917	5389
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25 CFR

256	4257
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PROPOSED RULES:

11	5528
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26 CFR

1	4603
54	4603

PROPOSED RULES:

1	4638,
301	4639, 5529, 5545, 5852, 5854

28 CFR

2	4977
16	4978

PROPOSED RULES:

2	5011
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29 CFR

522	5816
525	5818
1910	5916
1952	5819
2200	4604

30 CFR

710	5001
715	5001
716	5001
717	5001
718	5001
720	5001
725	5001
740	5001
795	5001
837	5001

PROPOSED RULES:

270	4264
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32 CFR

65	4856
209	5372
888g	4605

32 CFR—Continued

PROPOSED RULES:

1810	5389
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33 CFR

221	4978
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PROPOSED RULES:

117	4439, 4440
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36 CFR

254	5821
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PROPOSED RULES:

313	5545
322	5545
327	5545

37 CFR

PROPOSED RULES:

2	4441
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38 CFR

3	4423
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PROPOSED RULES:

3	5856
21	5549

39 CFR

111	4988
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40 CFR

52	4257, 4611
86	4552, 4553
142	5372
162	5782, 5788

PROPOSED RULES:

35	5390
52	4267, 4268, 4442
56	4872
141	5756
162	5857
228	5391
250	4366
257	4942

41 CFR

1-9	4424
Ch. 101	5373
101-11	4998
101-30	4998

PROPOSED RULES:

114-50	5391
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42 CFR

50	4570, 4832
51c	5352
56	5352
110	6020
405	4428, 5822, 5823
449	4571, 4833, 5823
450	4861
481	5373

42 CFR—Continued

PROPOSED RULES:

57	4784, 4790
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43 CFR

4	5514
17	4259

45 CFR

228	4581, 4843
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PROPOSED RULES:

185	4639
1601	4269

46 CFR

1	4431
5	4431
252	4857
280	4260

PROPOSED RULES:

283	4269
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47 CFR

73	4611-4616, 5000, 5515
78	4616
81	5377
83	4260
89	5831
91	4260

PROPOSED RULES:

67	4646, 5011
73	4647
76	5012

49 CFR

1	5515, 5834
177	4858
510	5516
571	4859, 4860
1033	4431-4433, 4617, 5834
1036	5835
1109	5836
1125	4261
1241	4617
1249	4617
1250	4617
1251	4617
3036	5836

PROPOSED RULES:

399	5397
1100	5857

50 CFR

17	4618
26	5517
33	4433, 5520
215	5520
216	5521

PROPOSED RULES:

17	4872
611	5398

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Community Services Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Secretary (Typing) to the Assistant Director for Management is excepted from the competitive service under Schedule C on the basis of confidentiality.

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3373(m) is added as set out below:

§ 213.3373 Community Services Administration.

(m) *Office of Management.*

(1) One Secretary (Typing) to the Assistant Director for Management.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION
JAMES C. SPRY,
*Executive Assistant
to the Commissioners.*

[FR Doc. 78-3834 Filed 2-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare;
Securities and Exchange Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This document shows that: (1) Schedule A authority for 30 positions on the staff of the White House Conference on Families is redesignated for general use in the Department of Health, Education, and Welfare to reflect changes in organizational responsibility; and (2) Schedule A authorities covering positions of Directors of the Divisions of Corporation Finance, Corporate Regulation and

Trading Markets, and nine positions of Regional Administrator are revoked because they are no longer needed. The positions are all filled by attorneys appointed under Schedule A authority 213.3102(d).

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3116(e)(2) is added and 213.3116(k), 213.3130 (a) and (b) are revoked as set out below:

§ 213.3116 Department of Health, Education, and Welfare.

(e) *General.* * * *

(2) Thirty positions at GS-15 and below for employment not to exceed September 30, 1980, on the staff of the White House Conference on Families.

(k) [Reserved]

§ 213.3130 Securities and Exchange Commission.

(a) [Reserved]

(b) [Reserved]

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION
JAMES C. SPRY,
*Executive Assistant
to the Commissioners.*

[FR Doc. 78-3833 Filed 2-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Excepted Schedules; Miscellaneous Revocations

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Subpart C of Part 213 is amended to show that 13 positions are revoked under the provisions of § 213.3301b because they have been vacant longer than 60 days.

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR Part 213 is amended as follows:

1. Section 213.3307 (a)(4) is revoked as follows;

§ 213.3307 Department of the Army.

(a) *Office of the Secretary.* * * *

(4) [Revoked].

2. Section 213.3309(a)(10) is revoked as follows:

§ 213.3309 Department of the Air Force.

(a) *Office of the Secretary.* * * *

(10) [Revoked].

3. Section 213.3312(a)(16) is revoked as follows:

§ 213.3312 Department of the Interior.

(a) *Office of the Secretary.* * * *

(16) [Revoked].

4. Section 213.3339 (a), (b), and (c) are revised to read as follows:

§ 213.3339 U.S. International Trade Commission.

(a) One Administrative Assistant and one Staff Assistant (Legal) to a Commissioner.

(b) One Staff Assistant (Legal), and one Staff Assistant to a Commissioner.

(c) One Staff Assistant (Legal), and one Confidential Assistant to a Commissioner.

5. Section 213.3344(d) is revoked as follows:

§ 213.3344 Occupational Safety and Health Review Commission. * * *

(d) [Revoked].

6. Section 213.3384(a)(24) and (m)(3) are revised; (a)(31) and (46) are revoked as follows:

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* * * *

(24) One Executive Secretary to the Under Secretary.

(31) [Revoked].

(46) [Revoked].

(m) Office of Legislation and Intergovernmental Relations.***

(3) One Senior Assistant for Congressional Relations.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-3852 Filed 2-9-78; 8:45 am]

[6325-01]

CAREER AND CAREER-CONDITIONAL EMPLOYMENT; ADVERSE ACTIONS BY AGENCIES; APPEALS TO THE COMMISSION

Editorial Amendments

AGENCY: Civil Service Commission.

ACTION: Editorial amendments.

SUMMARY: The following changes are being submitted to conform with the amendments to Part 713—Equal Opportunity, published in the *FEDERAL REGISTER*, p. 37530, July 22, 1977. Part 713 was amended to redefine the age group covered by the regulations from employees or applicants who are at least 40 and less than 65 years of age; to (a) employees who are at least 40 and less than 70 years of age and (b) applicants who are at least 40 and less than 65 years of age. The purpose of these amendments was to comply with a court decision (*Christie v. Marston*, 7th Circuit Court 1977, 551 F. 2d 1080).

EFFECTIVE DATE: March 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Donna M. Hartung, Civil Service Commission, Bureau of Policies and Standards, 1900 E Street NW., Washington, D.C. 20415, 202-632-5623.

Accordingly, 5 CFR 315.806(b)(1), 752.304(b)(2), and 772.306(a) are amended as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

§ 315.806. Appeal rights to the Commission.

(b) *On Discrimination.* (1) An employee may appeal under this subparagraph a termination which he/she alleges was based on discrimination because of race, color, religion, sex, or national origin; or age, *Provided*, That at the time of the alleged discriminatory action the employee was at least 40 years of age but less than 70 years of age. The Commission refers the

issue of discrimination to the agency for investigation of that issue and a report thereon to the Commission.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218. §§ 315.605 and 315.801(a)(6) also issued under Pub. L. 93-113 and E.O. 11103, 3 CFR, 1959-1963 Comp., p. 762; §§ 315.201(c)(3), 315.601 and 315.801(a)(3) interpret and apply 76 A Stat. 18; 2 C.Z.C. 149(c)(2); E.O. 9830, 3 CFR, 1943-1948 Comp., p. 606.)

PART 752—ADVERSE ACTIONS BY AGENCIES

§ 752.304. Appeal rights to the Commission.

(b) *Scope of review.****

(2) When an employee alleges that a suspension was taken as a result of discrimination on grounds of race, color, religion, sex, or national origin, or because of age: *Provided*, That the employee was at least 40 years of age but less than 70 years of age, the Commission refers the allegation of discrimination to the agency for investigation of that issue and a report thereon to the Commission.

(5 U.S.C. 1302, 3301, 3302, 7701; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11491, 3 CFR, 1966-1970 Comp., p. 861.)

PART 772—APPEALS TO THE COMMISSION

§ 772.306. Allegations of discrimination.

(a) Except as provided in paragraph (e) of this section, when an employee makes a timely allegation in writing in connection with an appeal under this subpart that the agency's action was based in whole or in part on discrimination because of race, color, religion, sex, or national origin, or because of age: *Provided*, That at the time of the action the employee was at least 40 years of age but less than 70 years of age, the Appeals Authority shall determine whether the appellant has been informed by the agency of his/her right to proceed under this subpart or under Part 713 of this chapter and of the scope of the review provided in each procedure. If the appellant has not been informed of the separate rights of appeal, the Appeals Authority shall refer the matter to the agency so the agency may explain the

alternate rights of appeal to the appellant as provided in § 713.236 of Part 713 of this chapter and afford him/her the opportunity, if appropriate, to elect which avenue of appeal he/she wishes to pursue.

(5 U.S.C. secs. 1302, 3301, 3302, 5115, 5338, 7512, 7701, 8347; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11491, 3 CFR, 1966-70 Comp., p. 803; 772.401-772.404 also issued under 5 U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966-70 Comp., p. 861.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-3835 Filed 2-9-78; 8:45 am]

[3410-30]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 230—NONFOOD ASSISTANCE PROGRAM

Appendix—Initial Apportionment of Food Service Equipment Funds Pursuant to Child Nutrition Act of 1966, For Fiscal Year 1978

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action apportions food service equipment assistance funds (formerly nonfood assistance funds) among States in compliance with subsections 5 (b) and (e) of the Child Nutrition Act.

EFFECTIVE DATE: January 31, 1978.

FOR FURTHER INFORMATION:

Margaret O'K. Glavin, School Programs Division Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8130.

Pursuant to sections 5 (b) and (e) of the Child Nutrition Act of 1966, Pub. L. 89-642, 80 Stat. 887, as amended, food service equipment assistance funds available for the fiscal year ending September 30, 1978, are apportioned among the States as follows:

SECTION 5(B)

State	*Total apportionment	State agency	Withheld for private schools
Connecticut.....	\$190,463	\$190,463	.....
Maine.....	100,452	95,540	\$4,912
Massachusetts.....	522,216	522,216	.....
New Hampshire.....	62,840	62,840	.....
Rhode Island.....	59,425	59,425	.....
Vermont.....	44,561	44,561	.....
Delaware.....	56,368	56,368	.....
District of Columbia.....	49,910	49,910	.....
Maryland.....	293,039	293,039	.....
New Jersey.....	430,950	430,950	.....
New York.....	1,144,726	1,144,726	.....
Pennsylvania.....	905,747	905,747	.....
Puerto Rico.....	335,087	335,087	.....
Virginia.....	521,455	515,046	\$6,409
Virgin Islands.....	15,193	15,193	.....
West Virginia.....	178,379	178,379	.....

SECTION 5(B)—Continued

State	Total apportionment	State agency	Withheld for private schools
Alabama.....	431,213	423,704	7,509
Florida.....	733,117	733,117	.....
Georgia.....	671,330	670,969	361
Kentucky.....	413,499	413,499	.....
Mississippi.....	320,990	320,990	.....
North Carolina.....	676,330	676,330	.....
South Carolina.....	366,597	366,597	4,882
Tennessee.....	452,212	446,177	6,035
Illinois.....	754,936	754,936	.....
Indiana.....	498,882	498,882	.....
Michigan.....	552,348	552,348	.....
Minnesota.....	419,443	419,443	5,910
Ohio.....	855,828	803,918	.....
Wisconsin.....	379,753	379,753	.....
Arkansas.....	244,884	240,782	4,102
Louisiana.....	546,220	546,220	.....
New Mexico.....	133,043	133,043	.....
Oklahoma.....	268,733	268,733	.....
Texas.....	1,166,205	1,142,964	23,241
Colorado.....	207,401	202,170	5,231
Iowa.....	337,948	337,948	.....
Kansas.....	229,754	229,754	.....
Missouri.....	447,212	445,590	1,622
Montana.....	66,601	64,429	2,172
Nebraska.....	143,940	131,730	12,210
North Dakota.....	68,327	62,560	5,767
South Dakota.....	77,133	77,133	.....
Utah.....	153,960	153,960	.....
Wyoming.....	32,240	32,240	.....
Alaska.....	23,718	23,718	.....
American Samoa.....	6,554	6,554	.....
Arizona.....	183,144	183,144	.....
California.....	1,203,093	1,203,093	.....
Guam.....	12,937	12,937	.....
Hawaii.....	116,115	109,454	6,661
Idaho.....	75,465	75,465	.....
Nevada.....	39,955	39,955	.....
Oregon.....	178,990	178,990	.....
Trust Territory.....	15,772	15,772	.....
Washington.....	250,034	246,449	3,585
Total.....	18,666,667	18,520,058	146,609

SECTION 5(E)

Connecticut.....	\$255,732	\$255,732	.....
Maine.....	135,320	121,564	\$13,756
Massachusetts.....	315,886	315,886	.....
New Hampshire.....	34,696	34,696	.....
Rhode Island.....	32,887	32,887	.....
Vermont.....	20,610	20,610	.....
Total.....	795,131	781,375	13,756
Delaware.....	19,858	19,858	.....
District of Columbia.....	29,841	29,841	.....
Maryland.....	134,154	134,154	.....

SECTION 5(B)—Continued

State	Total apportionment	State agency	Withheld for private schools
New Jersey.....	1,103,003	1,103,003	.....
New York.....	1,534,129	1,534,129	.....
Pennsylvania.....	373,808	373,808	.....
Puerto Rico.....	124,133	124,133	.....
Virgin Islands.....	114,599	114,599	110,912
West Virginia.....	50,595	50,595	.....
Total.....	3,490,802	3,379,890	110,912
Alabama.....	37,267	248	37,019
Florida.....	40,453	40,453	.....
Georgia.....	26,652	26,652	.....
Kentucky.....	35,113	35,113	.....
Mississippi.....	84,646	84,646	.....
North Carolina.....	51,942	51,942	.....
South Carolina.....	18,158	18,158	.....
Tennessee.....	9,362	9,362	9,362
Total.....	303,593	239,054	64,539
Illinois.....	1,263,303	1,263,303	.....
Indiana.....	106,492	106,492	.....
Michigan.....	838,673	838,673	.....
Minnesota.....	41,482	41,482	.....
Ohio.....	281,227	116,088	165,139
Wisconsin.....	111,419	111,419	.....
Total.....	2,642,596	2,477,457	165,139
Arkansas.....	10,411	704	9,707
Louisiana.....	119,583	119,583	.....
New Mexico.....	12,872	12,872	.....
Oklahoma.....	1,692	1,692	.....
Texas.....	294,814	181,374	113,440
Total.....	439,372	316,225	123,147
Colorado.....	63,601	30,267	33,334
Iowa.....	19,760	19,760	.....
Kansas.....	45,170	45,170	.....
Missouri.....	57,087	51,868	5,219
Montana.....	38,846	38,846	.....
Nebraska.....	69,596	36,866	32,730
North Dakota.....	12,726	7,259	5,467
South Dakota.....	13,737	13,737	.....
Utah.....	4,431	4,431	.....
Wyoming.....	15,705	15,705	.....
Total.....	340,659	263,909	76,750
Alaska.....	52,808	52,808	.....
American Samoa.....	2,082	2,082	.....
Arizona.....	81,329	81,329	.....
California.....	905,215	905,215	.....
Guam.....	1,874	1,874	.....
Hawaii.....	9,179	9,179	9,179
Idaho.....	17,002	17,002	.....
Nevada.....	17,852	17,852	.....

SECTION 5(e)—Continued

State	Total apportionment	State agency	Withheld for private schools
Oregon	85,454	85,454	
Trust Territory	37,025	37,025	
Washington	111,360	66,639	44,721
Total	1,321,180	1,267,280	53,900
Total	9,333,333	8,725,190	608,143

(Secs. 2, 5, 6 and 9 through 16, 80 Stat. 885-790; 42 U.S.C. 1771, 1774, 1775, 1778-1785.)

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 31, 1978.

PATRICIA W. DEITZ,
Acting Administrator.

[FR Doc. 78-3183 Filed 2-9-78; 8:45 am]

[3410-02]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING
SERVICE (MARKETING AGREEMENTS AND
ORDERS; FRUITS, VEGETABLES, NUTS), DE-
PARTMENT OF AGRICULTURE

[Lemon Reg. 131, Amdt. 1; Lemon Reg. 132]

PART 910—LEMONS GROWN IN CALIFORNIA
AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing
Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period February 12-18, 1978, and increases the quantity of such lemons that may be so shipped during the period February 5-11, 1978. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective February 12, 1978, and the amendment is effective for the period February 5-11, 1978.

FOR FURTHER INFORMATION
CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings.—Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on February 7, 1978, to consider supply and market

conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is similar to last week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.432 Lemon Regulation 132.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period February 12, 1978, through February 18, 1978, is established at 210,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.431 Lemon Regulation 131 (43 F.R. 4586) is amended to read as follows:

§ 910.431 Lemon Regulation 131.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period February 5 through February 11, 1978, is established at 225,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Dated: February 8, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Veget-
able Division, Agricultural
Marketing Service.

[FR Doc. 78-4027 Filed 2-9-78; 11:22 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH IN-
SPECTION SERVICE, DEPARTMENT OF AGRI-
CULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF
ANIMALS (INCLUDING POULTRY) AND ANIMAL
PRODUCTS

PART 73—SCABIES IN CATTLE

Areas Quarantined

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Brown, Haakon, and Kingsbury Counties in South Dakota because of the existence of cattle scabies. Psoroptic cattle scabies was confirmed by Veterinary Services Laboratories in South Dakota. Therefore, in order to prevent the dissemination of cattle scabies it is necessary to quarantine the infested areas.

EFFECTIVE DATE: February 3, 1978.

FOR FURTHER INFORMATION
CONTACT:

Dr. Glen O. Schubert, Chief Staff
Veterinarian, Sheep, Goat, Equine,
and Ectoparasites Staff, USDA,
APHIS, VS, Federal Building, Room
737, 6505 Belcrest Road, Hyattsville,
Md. 20782, 301-436-8322.

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Brown, Haakon, and Kingsbury Counties in South Dakota because of the existence of cattle scabies. The restrictions pertaining to the interstate movement of cattle from quarantined areas as contained in 9 CFR Part 73, as amended, will apply to the areas quarantined.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended restricting the interstate movement of cattle because of scabies, is hereby amended as follows:

In § 73.1a, a new paragraph (g) relating to the State of South Dakota is added to read:

§ 73.1a Notice of quarantine.

(g) Notice is hereby given that cattle in certain portions of the State of South Dakota are affected with scabies, a contagious, infectious, and communicable disease; and, therefore, the following areas in such State are hereby quarantined because of said disease:

(1) That portion of Brown County comprised of NE ¼ sec. 13, R. 60 W., T. 126 N.

(2) That portion of Haakon County comprised of SE ¼ sec. 7, R. 21 E., T. 1 N.

(3) That portion of Kingsbury County comprised of SW ¼ sec. 28, R. 56 W., T. 111 N.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendment imposes certain further restrictions necessary to prevent the interstate spread of cattle scabies and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 3rd day of February 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

(FR Doc. 78-3468 Filed 2-9-78; 8:45 am)

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY
ADMINISTRATION¹

PART 205—ADMINISTRATIVE PROCEDURES
AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached is the Interpretation issued by the Office of the General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period January 1, 1978, through January 31, 1978.

FOR FURTHER INFORMATION
CONTACT:

Diane Stubbs, Office of the General
Counsel, Department of Energy,

12th and Pennsylvania Avenue NW.,
Room 1121, Washington, D.C. 20461,
202-566-9070.

SUPPLEMENTARY INFORMATION:
Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977.

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, Interpretations are subject to appeal. The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the Notice first cited above.

Issued in Washington, D.C., February 7, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration,
Department of Energy.

APPENDIX

No.—1978-1, To—Alaska Petrochemical Co.,
Date—Jan. 24, Category—Allocation.

INTERPRETATION 1978-1

To: Alaska Petrochemical Co.

Date: January 25, 1978.

Rule Interpreted: 10 CFR 211.63.

Code: GCW—AI—December 1 Rule.

FACTS

The State of Alaska (the State) owns the lands in the vicinity of Prudhoe Bay, Alaska, beneath which large crude oil reserves have been discovered (North Slope crude oil). The State has leased these lands to various companies which are producing and marketing that crude oil. Under the terms of the leases, the State has reserved a royalty interest of 12½ percent of the crude oil (royalty oil), which it may take in "value" or in "kind." Presently, the State has elected to receive its royalty oil in value rather than in kind.

The State, however, is interested in receiving its royalty interest in kind and marketing that royalty oil so as to more directly benefit Alaska. To further this goal, the State sought and received an Interpretation from the Federal Energy Administration (FEA), a predecessor agency of the Department of Energy (DOE), which determined that the State could require the present producers of its royalty oil to prospectively waive the protective provisions of the crude oil supplier/purchaser rule (the rule), as set forth in 10 CFR 211.63, for themselves and

for all subsequent purchasers of the State's royalty oil. See "State of Alaska," Interpretation 1977-7, 42 FR 31143 (June 20, 1977). Under the terms of that Interpretation, the State has been assured, the crude oil supplier/purchaser rule notwithstanding, that it may elect to take its royalty interest in kind rather than be required to continue to permit the present producers of the royalty crude oil to market that oil.

The State has now entered into discussions with four companies, each of which is interested in building a refinery complex in Alaska to process the State's royalty oil. The Alaska Petrochemical Co. (Alpetco) is one of these competing companies. Alpetco, a consortium of the Alaska Interstate Co., Alaska Consolidated Shipping, Inc., and the Barbour Oil Co., was recently formed expressly for the purpose of constructing a refinery complex in Alaska.

While all four companies involved in the discussions with the State plan to purchase the State's royalty oil for use in their proposed refineries, Alpetco alone proposes to purchase and resell the State's royalty oil for the interim period during which its refinery is under construction. Any profits Alpetco earns on the resale of the royalty oil during this interim period would be contributed toward the construction of the refinery. Alpetco views this interim arrangement to purchase and market the State's royalty oil as an essential element in its effort to secure adequate financing for the refinery construction project.

In its submission, Alpetco states that Alaska seeks assurances, similar to those granted in Interpretation 1977-7, that the crude oil supplier/purchaser rule will not prevent the State from terminating sales of its royalty oil to Alpetco. In a letter to the DOE supporting Alpetco's request for Interpretation, the State has confirmed that it desires this assurance in order to ensure that it will be free to market its royalty oil elsewhere should Alpetco default under the terms of its contract with the State.

Basing its request upon Interpretation 1977-7, therefore, Alpetco requests a determination that the State and Alpetco, and Alpetco and all subsequent purchasers of the State's royalty oil, may enter into valid and binding agreements which would waive the benefits of the crude oil supplier/purchaser rule for sales of royalty oil to Alpetco.

In its request for Interpretation, Alpetco has indicated that there are three possible categories of purchasers to which it would attempt to sell the State's royalty oil during the interim period: The U.S. Government for placement in the Strategic Petroleum Reserve; major petroleum companies; and small and independent refiners. Alpetco states that as its refinery nears completion, it will be able to give adequate advance notice to these purchasers of the termination of the sales of the State's royalty oil, and contends, therefore, that it would not be inequitable for purchasers in each of these categories to prospectively waive the benefits of the crude oil supplier/purchaser rule.

ISSUE

May the State of Alaska and Alpetco enter into a valid and binding agreement for the sale of the State's royalty crude oil to Alpetco, where the provisions of that agreement would waive the benefits otherwise given to Alpetco and to all subsequent purchasers of the State's royalty oil by the

¹EDITORIAL NOTE.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

crude oil supplier/purchaser rule, as set forth in 10 CFR 211.63?

INTERPRETATION

For the reasons set forth below, it has been determined that Alpetco may enter into an agreement with the State of Alaska for the sale of the State's royalty oil, which agreement would waive Alpetco's right under §211.63 to continue to receive that royalty oil if for any reason the State should unilaterally deem it necessary to cancel the sales agreement. Moreover, Alpetco may enter into agreements with subsequent purchasers of the State's royalty oil, which agreements would require those purchasers to relinquish the benefits conferred by §211.63 to continued delivery of the royalty crude oil in the event the State should cease selling that oil to Alpetco.

The question of the applicability of the general crude oil supplier/purchaser rule of §211.63 to the State of Alaska's royalty crude oil was first discussed in Interpretation 1977-7. In the request for that Interpretation, the State of Alaska, concerned with the consequences of the crude oil supplier/purchaser rule on its future marketing policies for its royalty oil, asserted that the provisions of §211.63 should be interpreted to permit the purchasers of the State's royalty oil to waive any benefits the crude oil supplier/purchaser rule would otherwise afford to their interest in continuing to receive that crude oil.

Interpretation 1977-7 contains a brief review of the history and purpose of the crude oil supplier/purchaser rule, in which the FEA noted that the primary purpose of the rule was "to preserve in effect the domestic [crude oil] distribution pattern as it existed on December 1, 1973." 42 FR at 31144. Because the State of Alaska's royalty oil would not enter into the national crude oil distribution system until the summer of 1977, the Interpretation concluded that the waivers contemplated by the State would "in no way relate to preserving the December 1, 1973, national distribution system." Id.

Significantly, the Interpretation also found that waiver of the benefits of the crude oil supplier/purchaser rule by purchasers of the State's royalty oil would have certain beneficial effects. Specifically, it was noted that:

"... First, they [the waivers] will provide flexibility to a portion of the domestic crude market and offer the possibility for sales being made to a greater number of companies.

In addition, the proposed waivers will further the policy of Section 4(b) (F) of the EPAA in a way that might not otherwise be possible. Alaska has stated that it is interested in maintaining its lease option so that, among other reasons, Alaska's royalty crude oil could be kept for sale and processing within the State. Such use would further the purpose of "equitable distribution of crude oil ... at equitable prices ... among all ... areas of the United States." The Prudhoe Bay oil may prove to be the most feasible means in the future of fulfilling Alaska's needs for petroleum products.

Accordingly, it was determined that the purposes of the EPAA were best served, in such circumstances, by granting the Interpretation sought by the State. The result reached in Interpretation 1977-7 does not, however, mark a general retreat from the provisions of §211.63(b)(2), which extend the crude oil supplier/purchaser rule to all

first sales of new crude oil production. Rather, it represents a practical and workable interpretation of the regulation in light of the unique situation of the State of Alaska's royalty oil.

In order to analyze the provisions of the rule as they relate to the State's royalty oil, for purposes of evaluating Alpetco's request for Interpretation, it would be useful to first review the history and purposes of the crude oil supplier/purchaser rule. The rule was originally set forth in 10 CFR 211.64, 39 FR 1924 (January 15, 1974).^{*} It basically provided that all contracts for sales, purchases, and exchanges of domestic crude oil in effect on December 1, 1973, were to be maintained for the duration of the crude oil allocation program. In addition, for any first sale of crude oil after December 1, 1973, a continuing supplier/purchaser relationship was established.

The rule, of course, was adopted to further the objectives of the Emergency Petroleum Allocation Act of 1973 (the EPAA), Pub. L. No. 93-159. In Section 4(b)(1) of the EPAA, Congress directed that the Mandatory Petroleum Allocation and Price Regulations provide, inter alia, for:

(D) ... (C)ompetition in the producing, refining, distribution, marketing, and petrochemical sectors of such (petroleum) industry, and (preservation of) the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States ...

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among oil regions and areas of the United States and sectors of the petroleum industry ...

In the preamble to certain proposed amendments to the rule, issued on January 15, 1976, the FEA discussed the purposes underlying the original rule, noting (among other things) that the rule: (1) Maintained the national crude oil distribution system, which had been seriously threatened by the Arab oil embargo, as it existed on December 1, 1973; (2) established a supply floor upon which supply estimates could be furnished to implement a crude oil buy-sell program; and (3) preserved small and independent refiners' access to price-controlled domestic crude oil. 41 FR at 2830. The January 15, 1976, preamble determined that the "rationale for the original adoption of the rule is still valid in most respects, and requires that the rule be continued in effect ...". Id. at 2831. Indeed, the FEA found that, despite the plentiful supply of imported crude oil, there was less price-controlled domestic crude oil available in 1976 than was available in December 1973, and that continued allocation of the available quantity of that crude oil was required to assure that all refiners had equitable access to it.

Many of the reasons the FEA noted in 1976 for continuing the crude oil supplier/purchaser rule are still valid today. Despite the first deliveries of Alaskan North Slope crude oil in 1977, domestic crude oil produc-

^{*}The rule was renumbered as 10 CFR 211.63 on May 14, 1974 (39 FR 17287).

tion continues to be inadequate to meet total domestic needs, and small and independent refiners continue to rely upon the rule to assure that they will have access to price-controlled domestic crude oil.

It is clear, then, that preservation of the December 1, 1973, national crude oil distribution system, although highlighted in Interpretation 1977-7, is only one of several important reasons for continuing to maintain the crude oil supplier/purchaser rule. In light of the manifest need to continue the rule, it is recognized that universal application of the "waiver" principle enunciated in Interpretation 1977-7 would vitiate the provisions of 10 CFR 211.63(b)(2) and weaken the regulatory protections the rule affords to crude oil suppliers and purchasers.

In the present case, however, as in Interpretation 1977-7, competing considerations must also be examined. Crude oil produced in the Prudhoe Bay area is in a remote area of Alaska, distant from the contiguous United States. Construction of a major new pipeline was required to transport the crude oil to a tanker terminus in Southern Alaska, and virtually all of the Alaskan North Slope crude oil must be transported many thousands of miles to be refined.

The exploration for and production of this crude oil has contributed to rapid population growth and industrial expansion in Alaska, accompanied by a greatly increased demand for refined petroleum products. Most of these products must be shipped into Alaska from the contiguous United States at substantial cost. This new demand makes it increasingly important for the State to find feasible means of retaining a portion of North Slope crude oil production for use within the State. Under these circumstances, it is readily apparent that the State's declared intention to keep its royalty oil for use and sale within Alaska directly serves an important purpose of the EPAA by providing for the "equitable distribution of crude oil ... at equitable prices among all regions and areas of the United States ...". EPAA, Section 4(b)(1)(F).

These considerations, viewed in light of the paramount purposes of the EPAA, formed the basis for the decision in Interpretation 1977-7 to permit the producers of the State of Alaska's royalty oil to prospectively waive the benefits of the crude oil supplier/purchaser rule. Alpetco's request that it too be permitted to enter into such a waiver, should it purchase the State's royalty oil, clearly serves the same interests and considerations that led to the decision in Interpretation 1977-7, by permitting Alaska to negotiate for the construction of refinery facilities which will eventually utilize the State's royalty oil as its feedstocks and produce finished petroleum products for sale and use in Alaska.

In addition, subsequent "interim" purchasers of the royalty oil from Alpetco must be accorded particular consideration. If the DOE were to permit the State to enter into a contract with Alpetco which contains a waiver of the benefits of the crude oil supplier/purchaser rule, without allowing Alpetco, in turn, to enter into similar waivers with the subsequent purchasers of that crude oil, then the subsequent purchasers could face a sudden, complete loss of that source of crude oil should the State cease selling the crude oil to Alpetco. Such a result would be particularly serious here, because Alpetco, a company formed for the express purpose of constructing a refinery

complex in Alaska, would have no other source of crude oil to draw upon to provide substitute crude oil supplies for its purchasers. Should the State sell its royalty oil to Alpetco, therefore, it is important that all subsequent purchasers of that crude oil be able to enter into knowing waivers of the benefits of the crude oil supplier/purchaser rule, in order to minimize the adverse consequences of a decision by the State to cease selling its royalty oil to Alpetco.

Thus, in accordance with Interpretation 1977-7, the State of Alaska and Alpetco may enter into a valid and binding agreement for the sale of the State's royalty oil, which agreement contains a waiver of the benefits of the crude oil supplier/purchaser rule. Further, Alpetco may, in turn, enter into similar agreements with subsequent purchasers of the State's royalty oil, which agreements also contain express waivers of the benefits afforded by the rule.

This Interpretation is limited solely to the State of Alaska's royalty crude oil derived from North Slope production, and does not extend to any non-royalty crude oil which the State may, in the future, offer for sale to Alpetco.

[FR Doc. 78-3838 Filed 2-9-78; 11:28 am]

[3128-01]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Computation of Landed Costs: Timing¹

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending the definition of landed cost to provide that, with respect to arms-length transactions (That is, transactions between unaffiliated companies), the landed cost of oil shall be considered to be incurred when it is recognized as having been incurred by application of the refiner's customary accounting procedures. The amendment to the definition makes the timing of landed costs in arms-length transactions consistent with the timing of landed costs in inter-affiliate transactions. The use of a single standard by a firm will facilitate administration of the transfer pricing program under which DOE analyzes data from arms-length sales in order to determine the proper cost of crude oil purchased in particular months through inter-affiliate transactions.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Elliot Cohn (Office of Transfer Pricing), 2000 M Street NW., Room

B110, Washington, D.C. 20461, 202-634-7610.

Martin S. Kaufman (Office of General Counsel), 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9380.

Ed Villade (Media Relations), 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833.

SUPPLEMENTARY INFORMATION:

I. Background. Section 212.84(h) of DOE's Mandatory Petroleum Price Regulations provides, in pertinent part, that with respect to inter-affiliate transactions, "the landed cost shall be considered to be incurred when that cost is recognized as having been incurred by application of the refiner's customary accounting procedures generally accepted and consistently and historically applied." Present DOE regulations do not explicitly address the question of timing of landed costs in arms-length transactions; however, regulations first issued by the Cost of Living Council (CLC) (whose authority was transferred to the Federal Energy Office (FEO), then the Federal Energy Administration (FEA) and now to DOE), required that landed costs be incurred at the time of landing. "Landing" is recognized by the current refiner rules at § 212.83; however, the rule adopted today does not change the underlying requirement that for purposes of computing cost recovery under § 212.83, an incurred cost must be a known obligation to pay a specific amount and not merely a cost which is anticipated to be incurred in the future and thus not susceptible of precise and definite quantification. (See Case No. FEA-0257, *The Standard Oil Company (Ohio)*, 2 CCH Fed. Energy Guidelines, Par. 80,519). To make the procedures applicable to the timing of recording of the landed cost of crude oil for purposes of reporting to FEO, FEA and DOE consistent in both arms-length and inter-affiliate transactions, FEA, on September 30, 1977, issued a proposal (42 FR 54301, October 5, 1977) to amend paragraph (5) of the definition of "landed cost" in § 212.82, which pertains to arms-length transactions, to conform it to § 212.84(h), which establishes the timing for the incurring of costs in inter-affiliate transactions.

Written comments were solicited in connection with the proposed amendment and a public hearing was scheduled for October 27, 1977. Because of lack of interest, the hearing was canceled (42 FR 56348, October 25, 1977).

Ten written submissions were received from interested persons. Nine submissions supported the amendment without qualification. One of these, plus the tenth submission which did

not support the proposal, raised issues that will be discussed below.

II. Discussion. One firm supporting the proposal inquired about the proper procedure for adjusting costs in situations where a return to customary accounting procedures generally accepted and consistently and historically applied will alter the timing a company has used for accrual of costs and the basis on which those costs have been reported to DOE or its predecessor agencies. The comment assumed that DOE would apply the proposed amendment, if adopted, retroactively in every respect. That is not the case.

The preamble to the proposed amendment stated that it is DOE's intention not to initiate enforcement procedures against any firm for having incurred costs on the basis set forth in this amendment prior to its effective date. This conclusion is consistent with the reasoning in FEA Ruling 1977-4 (42 FR 12161, March 3, 1977), in which FEA stated that it would not institute disallowance proceedings against those firms that incurred costs in inter-affiliate transactions during the period preceding adoption of § 212.84(h) in accordance with the procedures specified therein—i.e., pursuant to their customary accounting procedures generally accepted and consistently and historically applied—even though that may not have been a proper application of the rules in effect at that time. Thus, to the extent that firms have previously been following the rule adopted today, they will not be considered to have been in violation of the prior rules. This result is justified because it is consistent with the treatment of inter-affiliate transactions; because it will create minimum disruption and distortion of a firm's normal accounting procedures; and because on the average it should not significantly affect a firm's total cost recoveries over time.

DOE also recognizes that certain firms (including the one submitting the comment in question), in response to their correct interpretation of the rule currently in effect, have been using procedures for timing of landed costs that differ from the firms' customary procedures, consistently and historically applied in the period preceding the August 1973 promulgation of the CLC regulations. The adoption of this amendment will require them to switch back to their customary accounting procedures. However, computations of costs incurred in the past are not intended to be affected by the amendment now being adopted. Re-statements or adjustments of landed costs for prior months of measurement would unduly complicate DOE's compliance audits, since all pending audits would have to be redone using the revised cost-pass-through calcula-

¹EDITORIAL NOTE: Chapter II will be amended at a future date to reflect that it contains regulations administered by the Department of Energy.

tions that would have to be made for each month since August 1973. Moreover, no refiner has indicated to DOE that it either would or should benefit by such recalculation.

To the extent that, as a result of this amendment, any firm prospectively will return to its accounting procedure generally accepted and consistently and historically applied for the incurring and reporting of landed costs in arms-length transactions, DOE expects that the accounting procedure utilized will be the procedure employed for financial reporting in May 1973. The generally accepted accounting practice must have been used for purposes of reports to stockholders. In connection with any audit, DOE may require a statement from the firm or its independent auditor that the accounting procedure employed had been consistently and historically applied.

A transition from an accounting procedure currently used to the accounting procedure prescribed in this amendment shall not have the effect of permitting the reporting of costs or quantities of the same barrels of crude oil more than once.

The one firm that opposed the adoption of the proposed amendment suggested that although the amendment's objective of attaining consistent treatment for the accrual of landed costs in arms-length and inter-affiliate transactions was appropriate, the amendment would not achieve that result. It was suggested that all landed costs be considered to have been incurred at the time of physical loading, because historical accounting procedures will vary among firms. The consistent treatment being sought by DOE through this rulemaking is within a firm, not among firms; it is recognized that different accounting approaches may be used by various firms. As was the case with respect to the rule regarding inter-affiliate transfers, to the extent that there will not be any overall adverse effect on consumer prices, it is preferable to utilize accounting procedures for regulatory purposes that are consistent with a firm's usual accounting procedures. This amendment seeks only to rectify the situation where, as a result of FEA's regulations, a different accounting method was used for arms-length transactions than was employed for inter-affiliate transactions.

The effective date will be March 1, 1978, to coincide with the beginning of a monthly reporting period.

III. *Regulations prescribed.* After a careful consideration of the written comments, DOE has determined to adopt the amendment as proposed (42 FR 54301, October 5, 1977).

In consideration of the foregoing, Part 212, Chapter II, Title 10, Code of Federal Regulations, is amended as set forth below effective March 1, 1978.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

Issued in Washington, D.C., February 3, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration, Department of Energy.

Section 212.82 is amended in paragraph (5) of the definition of "landed cost" to read as follows:

§212.82 Definitions.

"Landed cost" means: * * *

(5) For purposes of crude oil purchased in an arms-length transaction or purchased in a transaction to which § 212.84(g) is applicable, the purchase price (or the cost if § 212.84(g) is applicable) plus the cost of transportation, if any, computed pursuant to § 212.85, from the point of delivery to the firm to the U.S. port of entry (or the actual cost of transportation to the U.S. border in the case of crude oil not transported by sea), plus the cost of domestic transportation to the refinery, plus import fees and duties incurred. For purposes of this paragraph (5), the landed cost shall be considered to be incurred when the cost is recognized as having been incurred by application of the refiner's customary accounting procedures generally accepted and consistently and historically applied.

[FR Doc. 78-3789 Filed 2-7-78; 1:46 pm]

[7535-01]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 747—RULES OF PRACTICE AND PROCEDURE

Grounds for Removal Orders

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This document amends the Administration's rules and procedures applicable to proceedings relating to suspension and removal orders issued under a provision of the Federal Credit Union Act (the Act). This rule is issued under a recent amendment to the Act to provide that personal dishonesty need not be shown along with other grounds for suspension or removal of Federal credit

union directors, officers, committee members, or other persons participating in the conduct of the affairs of an insured credit union.

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

James J. Engel, Office of the General Counsel, National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456. Telephone 202-632-4870.

SUPPLEMENTARY INFORMATION:

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) provides the Administrator of the National Credit Union Administration with the authority to suspend, and remove from office, directors, officers, or committee members of federally insured credit unions, and prohibit other persons from participating in the conduct of the affairs of such insured credit unions. Subpart D of Part 747 of the National Credit Union Administration's rules and regulations (12 CFR Part 747) provides the rules and procedures relating to suspension and removal orders, and § 747.37 of the rules and regulations (12 CFR 747.37) states that the scope of Subpart D applies to those proceedings based "upon the grounds set forth in section 206 of the Federal Credit Union Act * * *." Section 747.38, in setting forth the grounds for removal orders, merely repeats, word for word, the contents of section 206(g) (1) and (2) of the Act (12 U.S.C. 1786(g) (1) and (2)).

On April 19, 1977, Pub. L. 95-22 was enacted amending various provisions of the Federal Credit Union Act. Section 206(g)(1) of the Act (12 U.S.C. 1786(g)(1)) was amended by striking out "and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer, or committee member * * *." Section 206(g)(2) of the Act (12 U.S.C. 1786(g)(2)) was amended by changing "dishonesty and unfitness" to read "dishonesty or unfitness" each place it appears.

Since § 747.38 of the rules and regulations merely restates the wording of section 206(g) (1) and (2) of the Federal Credit Union Act, the National Credit Union Administration is amending the regulation so as to bring it up to date. No interpretation of, or change in, the language set forth in Pub. L. 95-22 is involved in this amendment of the regulation, and the change made by Pub. L. 95-22 is already part of the regulation by virtue of the reference, in § 747.37, to the grounds set forth in section 206 of the Act. Due to the fact that these amendments are necessitated by, and conform the regulations to, the provisions of the April 19, 1977, amendments to

the Federal Credit Union Act, the Administrator finds that the procedures prescribed by the provisions of 5 U.S.C. 553 are unnecessary.

Accordingly, the Administrator hereby revises § 747.38 of the National Credit Union Administration rules and regulations, effective February 10, 1978, as set forth below.

LAWRENCE CONNELL,
Administrator.

FEBRUARY 8, 1978.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766); sec. 209, 84 Stat. 1104 (12 U.S.C. 1789); sec. 206, 91 Stat. 49 (12 U.S.C. 1786).)

Section 747.38(a) of the regulations involving grounds for removal orders is amended by striking out the words "and that such violation, practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer, or committee member."

Section 747.38(b) of the regulations involving grounds for removal orders is amended by changing "dishonesty and unfitness" to "dishonesty or unfitness" each time it appears therein.

[FR Doc. 78-3928 Filed 2-9-78; 8:45 am]

[8025-01]

Title 13—Business Credit and Assistance

CHAPTER 1—SMALL BUSINESS
ADMINISTRATION

[Revision 11]

PART 129—MANAGEMENT ASSISTANCE

Services Available to New or Prospective
Owners and Managers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule prescribes the various types of management assistance available to the new or prospective small business owner/manager by the Management Assistance Program within the Small Business Administration. This description is intended to fully describe the scope and delivery of services provided since previous rules regarding management assistance are out of date.

EFFECTIVE DATE: February 10, 1978.

ADDRESS: Small Business Administration, Assistant Administrator for Management Assistance, 1441 L Street NW., Room 606, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Judith B. Peters, Small Business Administration, 1441 L Street NW., Room 606, Washington, D.C. 20416, 202-653-6668.

SUPPLEMENTARY INFORMATION: Services provided to the new or prospective

small business owner/manager were previously covered as a section of Part 124, "Procurement and Technical Assistance," in the January 1, 1977 "Code of Federal Regulations." The Management Assistance portion is out of date and is being withdrawn from Part 124 and resubmitted as Part 129. Additionally, Part 129, as it appeared in the 1977 Code, "Service Corps of Retired Executives", etc., is now included as a section of Part 129.

Part 129 now deals exclusively with the Management Assistance program, of which the SCORE and ACE Programs are a part.

Only the numbers of the various sections have been changed in the SCORE and ACE portion.

Inasmuch as the rules set forth below are rules of Agency organization, procedures, and practices, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code.

Accordingly, Part 129 of Chapter I of Title 13 of the Code of Federal Regulations is amended as follows: 1. Old §§ 129.1-129.4 are redesignated as §§ 129.6-129.9. New §§ 129.1-129.5 are added as amended, Part 129 reads as follows:

GENERAL

- Sec.
129.1 Management Assistance Programs.
129.2 Counseling.
129.3 Training.
129.4 Publications.
129.5 International Trade.

SERVICE CORPS OF RETIRED EXECUTIVES
(SCORE) AND ACTIVE CORPS OF EXECUTIVES
(ACE) PAYMENT OF OUT-OF-POCKET
EXPENSES

- 129.6 Introduction.
129.7 Reimbursement for expenses within 50 miles.
129.8 Reimbursement for expenses for services beyond 50 miles.
129.9 Meetings, conferences, and workshops.

AUTHORITY: Sections 2 and 8 of the Small Business Act, as amended, 15 U.S.C. 631, 637(b). Sections 7(i) and 7(j) of the Small Business Act, as amended, 15 U.S.C. 636 (i) and (j). Sec. 302(c)(2), Domestic Volunteer Service Act, Pub. L. 93-113, 87 Stat. 404, Executive Order 11871 dated July 18, 1975.

GENERAL

§ 129.1 Management Assistance Programs.

The need for assistance in starting, managing, and operating a business is heightened by the number of failures that continue to increase every year in the small business community. It is estimated that managerial deficiencies cause 9 out of 10 business failures. A major objective of the Small Business Administration is to remedy this situation. Through the programs of the Office of Management Assistance, SBA works to improve and strengthen the management capabilities of small business.

§ 129.2 Counseling.

Individualized management and technical assistance is provided to small business persons, and those who are considering starting a business, through the various resources of the management assistance counseling programs at no charge. Management assistance counseling programs are based primarily on private sector resources, as follows:

(a) *SCORE and ACE.* The Service Corps of Retired Executives (SCORE), is a group of experienced retired executives who volunteer their services and offer a wide range of management and technical counseling to the small business community. Many were owners of small business concerns. The Active Corps of Executives (ACE) is an important auxiliary to SCORE. ACE is composed of executives who are still active in the business world. Members of ACE frequently furnish needed special talents which may not be represented among the SCORE volunteers of a specific locality.

(b) *Small Business Institute.* This program is a three-way cooperative among collegiate schools of business administration, members of the nation's small business community and the Small Business Administration. Graduate and upper division level students of business administration, under faculty supervision, provide counseling assistance to small business owner/managers. The program operates under formal contracts or voluntary agreements between SBA and the schools.

(c) *Professional Consulting Services.* The Small Business Administration enters into contracts with professional consulting concerns to provide management and technical assistance to small business concerns meeting the eligibility requirements specified in Section 119.21 of this chapter.

Services provided under this program may include accounting services, production, engineering and technical advice, feasibility studies, marketing analyses, etc.

§ 129.3 Training.

Training provided by the Small Business Administration is designed to impart the principles and skills of small business management to those persons who own or manage a business, or to those who intend to try. To meet these needs, four types of classroom training are offered—courses, conferences, and problem clinics for those already in business, and prebusiness workshops for those who intend to go into business. Except for prebusiness workshops, which are structured to provide a basic "going into business" orientation, this training is designed to meet local small business needs. To provide a wide variety of management subjects in hundreds of

locations throughout the nation, SBA cosponsors training with educational institutions, local business organizations, chambers of commerce, professional or trade associations, business groups, and other government agencies.

Cosponsorship of training activities is enhanced by the availability of films and other training materials produced for SBA. Information about specific training schedules on cosponsorship procedures may be obtained from any SBA field office.

§ 129.4 Publications.

SBA produces a series of business management publications which provide small business owner/managers, or those persons considering going into business, with information about modern management techniques. The publications are practical and easy to read. There are four series of free publications: Management Aids for Small Manufacturers, Small Marketers Aids, Small Business Bibliographies, and Counseling Notes. These 6-8 page leaflets covering marketing and manufacturing business information, as well as bibliographical information on specific trades and industries, are available free of charge from SBA field offices. A series of management publications explaining business subjects like "cash planning" in considerable detail, and a series on starting and managing various types of businesses are available at nominal prices through the Superintendent of Documents, Washington, D.C. 20402.

§ 129.5 International trade.

SBA offers several publications and programs designed to encourage and assist existing and prospective small business exporters to develop their international marketing potential. Counseling assistance is available from local field offices and the agency periodically offers and cosponsors various export workshops and training programs. Application for management assistance services may be made through SBA district offices.

SERVICE CORPS OF RETIRED EXECUTIVES (SCORE) AND ACTIVE CORPS OF EXECUTIVES (ACE) PAYMENT OF OUT-OF-POCKET EXPENSES

§ 129.6 Introduction.

The Small Business Act, as amended, Pub. L. 90-104, and the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, authorize the reimbursement of volunteers of the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) for certain out-of-pocket and travel expenses. The out-of-pocket expenses must be incident to their provision of services under this Act. Travel expenses are authorized while the volun-

teers are providing services away from their home or regular place of business. Travel expenses include per diem in lieu of subsistence.

§ 129.7 Reimbursement of expenses within a 50-mile radius of home.

A volunteer will be reimbursed while performing services within a 50-mile radius of his home or regular place of business for the following expenses: Local phone calls, parking fees, public transportation, bus and train fares; local taxis; personal automobile mileage charges authorized by the Standardized Government Travel Regulations; highway tolls and related expenses necessary to the provision of volunteer services approved by the appropriate District or Regional Office.

§ 129.8 Reimbursement of expenses for services beyond 50 miles.

A volunteer may provide services beyond a radius of 50 miles from his home or regular place of business only with the prior approval of the appropriate SBA Regional or District Office. Upon receipt of such approval, he will be reimbursed only for the following expenses:

(a) Automobile travel, including personal automobile mileage charges authorized by Standardized Government Travel Regulations, highway and related tolls; and parking fees.

(b) Other travel, including bus and rail, airplane (where specifically authorized by the appropriate SBA District or Regional Office official), local taxis, and public transportation.

(c) Per diem expenses in lieu of subsistence as authorized by the Standard Government Travel Regulations.

(d) Miscellaneous related expenses including local phone calls, approved by the appropriate SBA District or Regional Office.

§ 129.9 Meetings, conferences, and workshops.

With prior approval of the appropriate SBA District or Regional Office, an authorized delegate to SCORE and ACE national, regional, or district meetings, conferences, or workshops, is authorized to receive travel expenses and per diem as provided in §§ 129.2 and 129.3. Members of the National SCORE Council may also be reimbursed for necessary expenses to attend authorized meetings, conferences, and workshops in accordance with the provisions of §§ 129.2 and 129.3.

(Catalog of Federal Domestic Assistance Program No. 59.005, Management Assistance to Small Business.)

Dated: February 3, 1978.

PATRICIA M. CLOHERTY,
Deputy Administrator.

[FR Doc. 78-3787 Filed 2-9-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Requests for Disclosure of Records

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This rule delegates to the Deputy Bureau Directors the power to act as alternate "responsible officials" in denying initial requests under the Freedom of Information Act for material in active investigatory files. This change is designed to speed up the processing of FOIA requests by providing for an alternate "responsible official".

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Barry R. Rubin, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3865.

Accordingly, 16 CFR 4.11(a)(1)-(iv)(B) is amended to read as follows:

§ 4.11 Requests for disclosure of records.

(a) * * *

(1) Initial determination. * * *

(iv) * * *

(B) The Secretary is deemed to be the sole official responsible for all denials of initial requests, except denials to materials contained in active investigatory files in which case the Director or Deputy Director of the Bureau or Director of the Regional Office responsible for the investigation shall be the responsible official.

(15 U.S.C. 46(g).)

By direction of the Commission.

Dated: February 1, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-3759 Filed 2-9-78; 8:45 am]

[6750-01]

[Docket No. C-2915]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

Ryder System, Inc.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Miami, Fla., vocational training correspondence school to cease misrepresenting or failing to disclose pertinent facts regarding industry demand, government and industry requirements; job placement; and location of training sites. Respondent is required to provide enrollees with prescribed forms and disclosures relating to rights of cancellation and refund; and employment success of former graduates. Further, respondent is required to make restitution to those former students determined to be eligible, in the manner and form set forth in the order.

DATES: Complaint and order issued December 28, 1977.¹

FOR FURTHER INFORMATION CONTACT:

Donald Williams, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3909.

SUPPLEMENTARY INFORMATION: On Friday, February 18, 1977, there was published in the *FEDERAL REGISTER* (42 FR 10047) a proposed consent agreement with analysis in the Matter of Ryder System, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission.

The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages or connections; § 13.15-20 Business methods and policies; § 13.15-90 Government endorsement; § 13.15-100 History; § 13.15-245 Prospects; § 13.15-250 Qualifications and abilities; § 13.15-255 Reputation, success, or standing; § 13.15-265 Service; § 13.42 Connection of others with goods; § 13.50 Dealer or seller assistance; § 13.55 Demand, business or

other opportunities; § 13.60 Earnings and profits; § 13.75 Free goods or services; § 13.85 Government approval, action, connection or standards; § 13.85-65 States; § 13.90 History of product or offering; § 13.115 Jobs and employment service; § 13.143 Opportunities; § 13.155 Prices; § 13.160 Promotional sales plans; § 13.170 Qualities or properties of product or service; § 13.170-35 Educational, informative, training; § 13.175 Quality of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.225 Services; § 13.250 Success, use or standing; § 13.285 Value. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; § 13.330-90 United States Government; § 13.330-90(1) Veterans Administration. Subpart—Contracting For Sale in Any Form Binding on Buyer Prior to End of Specified Time Period: § 13.527 Contracting for sale in any form binding on buyer prior to end of specified time period. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-5 Arbitration; § 13.533-20 Disclosures; § 13.533-35 Employment of independent agencies; § 13.533-45 Maintain records; § 13.533-55 Refunds, rebates and/or credits. Subpart—Failing to Maintain Records: § 13.1051 Failing to maintain records. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1430 Government endorsement, sanction or sponsorship; § 13.1435 History; § 13.1540 Reputation, success or standing; § 13.1553 Services. —Goods: § 13.1608 Dealer or seller assistance; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1625 Free goods or services; § 13.1632 Government endorsement or recommendation; § 13.1650 History of Product; § 13.1670 Jobs and employment; § 13.1697 Opportunities in product or service; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use, or standing; § 13.1775 Value. —Prices: § 13.1778 Additional costs unmentioned. —Services: § 13.1835 Cost. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1854 History of products; § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1892 Sales contract, right-to-cancel provision; § 13.1892-2 Commencing contractual obligations prior to end of cooling-off period; § 13.1895 Scientific or other relevant facts. Subpart—Offering Unfair, Improper and Deceptive Inducements to Purchase or Deal: § 13.1935 Earnings and profits;

§ 13.1960 Free service; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-3820 Filed 2-9-78; 8:45 am]

[6355-01]

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER A—GENERAL

PART 1012—MEETINGS: ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Pre-Proposal Conferences

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's meetings policy. The amendment provides that pre-proposal conferences the Commission conducts involving confidential procurements made in conjunction with potential litigation matters are not subject to the advance notice or public attendance requirements of the meetings policy. The amendment also provides that summaries of these preproposal conferences need not be made public until after the procurements are made public. The purpose of the amendment is to protect the confidentiality of such meetings.

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard W. Allen, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, 202-634-7770.

SUPPLEMENTARY INFORMATION: The Commission's meetings policy (16 CFR Part 1012) requires, with limited exceptions, that all meetings between Commission employees and outside parties concerning substantial interest matters be announced to the public in advance and be open to the public. It also requires records of such meetings to be kept and made available to the public. This amendment to the commission's meetings policy was prompted by a petition from David A. Swit, Washington, D.C., to amend the meetings policy to assure that the Commission staff provides advance notice to the public of all pre-proposal conferences and that the conferences be open to the public. The purpose of Mr.

¹ Copies of the complaint, and the decision and order filed with the original document.

Swit's petition was to enable interested parties, including the media, to be aware of these conferences and attend them if they desire. On January 5, 1978, the Commission denied the petition on the basis that pre-proposal conferences may, from time to time, be required to be closed to the public and be held without advance notice in order to protect the confidentiality of procurements relating to potential litigation matters. For example, the Commission may want to use a contractor to obtain information as part of an investigation relating to a suspected violation of a Commission regulation. Premature release of information about the contract or the investigation could prejudice the Commission's ability to successfully bring an enforcement action and could prejudice the rights of a potential defendant to a fair trial since the information and evidence relating to the suspected violation may not be substantiated at the time a pre-proposal conference is held. Accordingly, the Commission would contract pursuant to 41 U.S.C. 252(c)(12), the statutory authority for contracting on a confidential basis.

The petition from Mr. Swit highlighted the fact, however, that there was no existing provision in the commission's meetings policy that would exempt the agency staff from the advance notice and open meeting requirements for a pre-proposal conference conducted in connection with a confidential procurement made in conjunction with potential litigation matters. Nor was there any provision which would exempt the agency staff from filing a meeting summary for such a conference in the Commission's public file.

The Commission believes it is important to protect the confidentiality of certain procurements involving potential litigation matters. Accordingly, it decided to amend the meetings policy to except such pre-proposal conferences from the notice and open meeting requirements. Also, the requirement in the meetings policy that a meeting summary of a closed meeting be filed in the Office of the Secretary for public information within 20 days of the meeting is amended to provide that the meeting summary of a closed pre-proposal conference need not be filed with the Office of the Secretary until information concerning the confidential procurement can be made public.

The Commission has determined that since this amendment is a statement of policy and procedure, the notice, public procedure, and delayed effective date provisions of 5 U.S.C. 553 are inapplicable. Accordingly, the notice and public procedure are dispensed with and the meetings policy is made effective upon publication.

Accordingly, § 1012.5(b) of Title 16, Chapter II, Subchapter A of the Code

of Federal Regulations, is amended as follows:

1. In § 1012.5(b)(1)(ii), a new subparagraph (H) is added to paragraph (b)(1)(ii) and a new subparagraph (J) is added to paragraph (b)(2)(ii) reading as follows:

§ 1012.5 Agency meeting; requirements for advance public notice and attendance by the public.

(b) Meetings between Commissioners or Agency staff and outside parties.

(1) Notice * * *

(ii) Exceptions * * *

(H) Pre-proposal conferences involving confidential contracts made, pursuant to 41 U.S.C. 252(c)(12), in connection with potential litigation matters.

(2) Attendance by the public. * * *

(ii) The following Agency meetings are not open to the public: * * *

(J) Pre-proposal conferences involving confidential contracts made, pursuant to 41 U.S.C. 252(c)(12), in connection with potential litigation matters.

2. In § 1012.6(c)(1)(ii), a new sentence is added at the end of the present text, reading as follows:

§ 1012.6 Recordkeeping requirements.

(c) Agency meetings * * *

(1) Agency Meeting Summaries * * *

(ii) * * * However, a meeting summary for a pre-proposal conference involving a confidential contract which is closed and for which advance notice is not provided to the public pursuant to §§ 1012.5(b)(1)(ii) and 1012.5(b)(2)(ii) is not required to be filed with the Office of the Secretary until the contract is made public.

Dated: February 3, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer
Product Safety Commission.

[FR Doc. 78-3786 Filed 2-9-78; 8:45 am]

[4210-01]

Title 24 Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 3914]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATE: The date listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) For acquisition and construction purposes, and

(2) For property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and insurance is purchased. Accordingly, for communities listed under this Part such restriction exists as of the effective date of suspension because insurance, which is required, cannot be purchased.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities suspended in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR

Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the list below.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public inter-

est. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each

listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of suspended communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
Colorado	Adams	Commerce City, city of	April 11, 1974, emergency; June 28, 1974, regular; Feb. 20, 1978, suspended.	June 28, 1974 July 11, 1975	080006-A
Do	Arapahoe	Englewood, city of	Feb. 26, 1971, emergency; Feb. 11, 1972, regular; Feb. 20, 1978, suspended.	Feb. 9, 1972	085074-C
Do	do	Wheat Ridge, city of	Apr. 16, 1971, emergency; May 26, 1972, regular; Feb. 20, 1978, suspended.	May 26, 1972	085079-A
Delaware	Sussex	Unincorporated areas	Apr. 16, 1971, emergency; Oct. 6, 1976, regular; Feb. 20, 1978, suspended.	Dec. 13, 1974	100029-A
Florida	Broward	Tamarac, city of	June 2, 1972, emergency; June 21, 1974, regular; Feb. 20, 1978, suspended.	June 21, 1974	120058-A
Georgia	Richmond	Augusta, city of	Nov. 26, 1973, emergency; May 24, 1974, regular; Feb. 20, 1978, suspended.	May 24, 1974 Aug. 20, 1976	130159-A
Illinois	Stephenson	Unincorporated areas	Mar. 17, 1972, emergency; Dec. 27, 1974, regular; Feb. 20, 1978, suspended.	Dec. 27, 1974	170839
Michigan	Ottawa	Grand Haven, city of	Aug. 28, 1973, emergency; June 28, 1974, regular; Feb. 20, 1978, suspended.	June 28, 1974 Aug. 1, 1975	260269-A
Do	do	Spring Lake, township of	Sept. 4, 1973, emergency; June 28, 1974, regular; Feb. 20, 1978, suspended.	June 28, 1974 May 21, 1976	260281-A
Do	Iosco	Tawas, city of	July 23, 1973, emergency; May 31, 1974, regular; Feb. 20, 1978, suspended.	May 31, 1974 June 18, 1976	260102-A
Minnesota	Hennepin and Wright	Dayton, city of	Sept. 25, 1973, emergency; Jan. 4, 1974, regular; Feb. 20, 1978, suspended.	Jan. 4, 1974 Oct. 15, 1976	270157-A
Nebraska	Cass	Nehawka, city of	Apr. 17, 1975, emergency; Sept. 6, 1974, regular; Feb. 20, 1978, suspended.	Sept. 6, 1974 Nov. 28, 1975	310032-A
Do	Sarpy	Springfield, city of	Nov. 2, 1973, emergency; May 3, 1974, regular; Feb. 20, 1978, suspended.	May 3, 1974 Nov. 28, 1975	310194-A
New Jersey	Atlantic	Absecon, city of	Mar. 5, 1976, emergency; June 28, 1974, regular; Feb. 20, 1978, suspended.	June 28, 1974	340001-B
Do	do	Atlantic City, city of	June 30, 1970, emergency; June 18, 1971, regular; Feb. 20, 1978, suspended.	June 18, 1971	345278-B
Do	Cape May	Avalon, borough of	Dec. 31, 1970, emergency; Apr. 17, 1970, regular; Feb. 20, 1978, suspended.	Apr. 17, 1970 Oct. 31, 1975	345279-A
Do	Ocean	Beach Haven, borough of	Apr. 2, 1971, emergency; June 17, 1971, regular; Feb. 20, 1978, suspended.	June 17, 1970	345282-B
Do	do	Bay Head, borough of	Aug. 13, 1971, emergency; Aug. 17, 1970, regular; Feb. 20, 1978, suspended.	Aug. 17, 1971 Mar. 19, 1976	345281-C
Do	Atlantic	Brigantine, city of	May 15, 1970, emergency; June 18, 1971, regular; Feb. 20, 1978, suspended.	May 15, 1970	345286-A
Do	Cape May	Cape May City, city of	Feb. 26, 1971, emergency; Aug. 7, 1970, regular; Feb. 20, 1978, suspended.	Aug. 7, 1970	345288-A
Do	do	Cape May Point, borough of	Dec. 31, 1970, emergency; July 1, 1970, regular; Feb. 20, 1978, suspended.	July 1, 1970	345289-B
Do	Cumberland	Downe, township of	Oct. 22, 1971, emergency; Apr. 20, 1973, regular; Feb. 20, 1978, suspended.	Apr. 20, 1973 June 25, 1976	340167-A
Do	Ocean	Dover, township of	Oct. 23, 1970, emergency; Mar. 24, 1972, regular; Feb. 20, 1978, suspended.	Oct. 23, 1970	345293-B
Do	do	Lavallette, borough of	Sept. 11, 1970, emergency; June 11, 1971, regular; Feb. 20, 1978, suspended.	June 11, 1971	340379-C
Do	Monmouth	Little Silver, borough of	Sept. 29, 1972, emergency; Aug. 31, 1973, regular; Feb. 20, 1978, suspended.	Aug. 31, 1973 Aug. 27, 1976	340305-A
Do	do	Long Branch, city of	Mar. 17, 1972, emergency; May 5, 1976, regular; Feb. 20, 1978, suspended.	May 31, 1974	340307-A
Do	Atlantic	Longport, borough of	July 10, 1970, emergency; June 18, 1971, regular; Feb. 20, 1978, suspended.	Aug. 12, 1970	345302-A
Do	Somerset	Manville, borough of	Dec. 15, 1972, emergency; Apr. 13, 1972, regular; Feb. 20, 1978, suspended.	Apr. 13, 1973 Dec. 24, 1976	340437-A
Do	Atlantic	Margate, city of	July 10, 1970, emergency; June 19, 1971, regular; Feb. 20, 1978, suspended.	June 18, 1971	345304-B
Do	Somerset	Peapack and Gladstone, borough of	Jan. 28, 1972, emergency; Dec. 15, 1977, regular; Feb. 20, 1978, suspended.	Mar. 1, 1974 Mar. 19, 1976	340441-B
Do	Union	Plainfield, city of	June 19, 1970, emergency; June 25, 1977, regular; Feb. 20, 1978, suspended.	June 26, 1971	345312-B
New York	Suffolk	Asharoken, village of	Sept. 11, 1970, emergency; Aug. 20, 1971, regular; Feb. 20, 1978, suspended.	Aug. 20, 1971	365333-B
Do	Westchester	Briarcliff Manor, village of	May 23, 1973, emergency; June 28, 1974, regular; Feb. 20, 1978, suspended.	June 28, 1974 Apr. 9, 1976	360904-B
Do	Suffolk	Brookhaven, town of	Jan. 15, 1971, emergency; Sept. 1, 1972, regular; Feb. 20, 1978, suspended.	Jan. 15, 1971	365334-B
Do	Erie	East Aurora, village of	Dec. 23, 1971, emergency; July 20, 1973, regular; Feb. 20, 1978, suspended.	July 20, 1973	365335-A
Do	Ontario	Geneva, town of	Mar. 30, 1973, emergency; July 26, 1974, regular; Feb. 20, 1978, suspended.	July 26, 1974 July 16, 1976	360600-A
Do	Monroe	Hamlin, town of	Mar. 2, 1973, emergency; Jan. 23, 1974, regular; Feb. 20, 1978, suspended.	Jan. 23, 1974 May 14, 1976	360418-B
Do	Cattaraugus	Little Valley, village of	July 22, 1975, emergency; May 31, 1974, regular; Feb. 20, 1978, suspended.	May 31, 1974 Apr. 30, 1976	360082-A
Do	Livingston	Livonia, town of	Apr. 17, 1973, emergency; Mar. 8, 1974, regular; Feb. 20, 1978, suspended.	Mar. 8, 1974 Apr. 30, 1976	360386-B

RULES AND REGULATIONS

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
New York	Nassau	Long Beach, city of	Mar. 5, 1971, emergency; June 30, 1972, regular; Feb. 20, 1978, suspended.	July 1, 1972 Oct. 24, 1975	365338-A
Do	Suffolk	Lloyd Harbor, village of	Dec. 19, 1973, emergency; Apr. 12, 1974, regular; Feb. 20, 1978, suspended.	Apr. 12, 1974 Sept. 24, 1976	360799-A
Do	Oswego	Richland, town of	Mar. 21, 1974, emergency; July 26, 1974, regular; Feb. 20, 1978, suspended.	July 26, 1974 June 4, 1976	360660-A
Do	Nassau	Sea Cliff, village of	Sept. 17, 1973, emergency; Feb. 1, 1974, regular; Feb. 20, 1978, suspended.	Feb. 1, 1974 Apr. 30, 1976	360493-A
Do	Wayne	Sodus, town of	Aug. 16, 1974, emergency; Aug. 16, 1974, regular; Feb. 20, 1978, suspended.	Aug. 16, 1974 Oct. 8, 1976	360898-A
Do	Suffolk	Shelter Island, town of	Aug. 31, 1973, emergency; May 3, 1974, regular; Feb. 20, 1978, suspended.	May 31, 1974 July 30, 1976	360809-A
Do	Steuben	Urbana, town of	June 20, 1973, emergency; May 10, 1974, regular; Feb. 20, 1978, suspended.	May 10, 1974	360783-A
Do	Oneida	Whitesboro, village of	Mar. 15, 1974, emergency; Feb. 22, 1974, regular; Feb. 20, 1978, suspended.	Feb. 22, 1974 May 21, 1976	360566-A
Do	Niagara	Wilson, town of	May 21, 1973, emergency; Feb. 22, 1974, regular; Feb. 20, 1978, suspended.	May 17, 1974 July 23, 1976	360514-A
North Carolina	Gaston	Gastonia, city of	Nov. 26, 1973, emergency; Apr. 12, 1974, regular; Feb. 20, 1978, suspended.	June 21, 1974 Aug. 20, 1976	370100-A
Do	Wilkes	North Wilkesboro, city of	Dec. 28, 1973, emergency; June 21, 1974, regular; Feb. 20, 1978, suspended.	Apr. 12, 1974 Aug. 13, 1976	370257-A
Oregon	Polk	Unincorporated areas	Dec. 10, 1971, emergency; Feb. 7, 1975, regular; Feb. 20, 1978, suspended.	Feb. 7, 1975	410186
Pennsylvania	Mifflin	Burnham, borough of	Feb. 9, 1973, emergency; Aug. 31, 1973, regular; Feb. 20, 1978, suspended.	Aug. 31, 1973 May 7, 1976	420684-A
Do	Erie	Corry, city of	July 11, 1973, emergency; Apr. 12, 1974, regular; Feb. 20, 1978, suspended.	Apr. 12, 1974 Aug. 27, 1976	420447-A
Do	York	Fairview, township of	Sept. 8, 1972, emergency; Feb. 22, 1974, regular; Feb. 20, 1978, suspended.	Feb. 22, 1974	420923
Do	Cumberland	Hampden, township of	Apr. 14, 1972, emergency; May 3, 1974, regular; Feb. 20, 1978, suspended.	May 3, 1974	420360
Do	Mifflin	Newton-Hamilton, borough of	Jan. 30, 1974, emergency; June 28, 1974, regular; Feb. 20, 1978, suspended.	June 28, 1974 Apr. 23, 1976	420689-A
Do	Berks	Kenhorst, borough of	Dec. 29, 1972, emergency; Nov. 5, 1976, regular; Feb. 20, 1978, suspended.	Nov. 5, 1976	420135-A
Do	Bucks	Sellersville, borough of	July 9, 1973, emergency; Mar. 8, 1974, regular; Feb. 20, 1978, suspended.	Mar. 8, 1974	420203
Do	Crawford	Titusville, city of	July 23, 1973, emergency; May 31, 1974, regular; Feb. 20, 1978, suspended.	May 31, 1974 Jan. 30, 1976	420354-A
Do	Mercer	Wheatland, borough of	Feb. 15, 1974, emergency; July 19, 1974, regular; Feb. 20, 1978, suspended.	July 19, 1974 July 30, 1976	420681-A
Do	Bradford	Wysox, township of	Sept. 26, 1973, emergency; July 26, 1974, regular; Feb. 20, 1978, suspended.	July 26, 1974 July 9, 1976	420977-A
Tennessee	Williamson	Brentwood, city of	Mar. 23, 1973, emergency; Nov. 30, 1973, regular; Feb. 20, 1978, suspended.	Nov. 30, 1973	470205
Washington	Cowlitz and Clark	Woodland, city of	June 23, 1972, emergency; Nov. 2, 1973, regular; Feb. 20, 1978, suspended.	Nov. 2, 1973 June 11, 1976	530035-A
West Virginia	Harrison	Clarksburg, city of	Sept. 18, 1973, emergency; Dec. 28, 1973, regular; Feb. 20, 1978, suspended.	Dec. 28, 1973 Mar. 26, 1976	540056-A
Wisconsin	Ashland	Unincorporated areas	Oct. 4, 1973, emergency; Feb. 15, 1978, regular; Feb. 20, 1978, suspended.	Feb. 15, 1978	550004
Colorado	Jefferson	Lakewood, city of	Apr. 16, 1971, emergency; July 21, 1972, regular; Feb. 23, 1978, suspended.	July 21, 1972	085075-A
Ohio	Cuyahoga and Geauga	Hunting Valley, village of	Sept. 10, 1973, emergency; Jan. 5, 1978, regular; Feb. 23, 1978, suspended.	Nov. 30, 1973 June 4, 1976	390594-B

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: January 26, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3502 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-2891]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Frederick, Frederick County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Frederick, Frederick County, Md. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Frederick, Frederick County, Md.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Frederick, Frederick County, Md., are available for review at City Hall, Frederick, Md.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Frederick, Frederick County, Md.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)).

An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Carroll Creek	Confluence with Monocacy River	271
	Highland St.	271
	Wisner St.	275
	Carroll St.	280
	South Court St.	286
	Bentz Ave.	287
	College Ave.	289
	College Ter.	294
	Fairview Ave.	299
	Shookstown Rd.	308
	Baughman's Lane	310
Rock Creek	Confluence with Carroll Creek	308
	Baughman's Lane	313
	Confluence with tributary No. 5	325
	Willowdale Dr.	336
	Waverly Dr.	369
	Private road (corporate limits)	434
	Tributary No. 5	325
Tributary No. 6	Confluence with Rock Creek	302
	West Patrick St.	312
	Valley St.	318
	Braddock Ave.	348
Tributary No. 8	Unnamed road crossing upstream of Interstate 15	272
	East corporate limits	317
Tributary No. 9	Fairview Ave.	274
	East corporate limits	281
Tributary No. 10	North Market St.	274
	North corporate limits	274
Tributary No. 11	do	274

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3483 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-2593]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Berkley, Bristol County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Berkley, Bristol County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Berkley, Mass.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Berkley, are available for review at Town Hall, Rural Route 1, Berkley, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Berkley, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Taunton River.....	Peters Point.....	14.5
	Berkley Bridge.....	14.5
	Three Mile River.....	14.0
	Berkley-Taunton Line.....	13.5
Assonet River.....	Corporate limits.....	14.5

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary,

[FR Doc. 78-3484 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3407]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Acton, Middlesex County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Acton, Middlesex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Acton, Mass.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Acton, are available for review at Town Hall, Main Street, Acton, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Acton, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Conant Brook.....	Musket Dr.....	203
	Newton Rd.....	196
	Nagog Hill Rd.....	196
	Main St.....	148
Nashoba Brook.....	do.....	172
	Carlisle Rd.....	170
	Wheeler Lane Dam.....	168
	Dam.....	153
	ConRall (12,800 ft upstream of Concord Road Dam).....	147
	Great Rd.....	144
	Brook St Dam.....	141
	Brook St.....	139
	ConRall (6,850 ft upstream of Concord Road Dam).....	139
	ConRall (4,800 ft upstream of Concord Road Dam).....	138
	Concord Rd.....	138
	Concord Rd Dam.....	137
	ConRall (1,100 ft downstream of Concord Road Dam).....	128
	Wetherbee St.....	128
	Acorn structures.....	127
Tributary 2.....	Fernwood Rd.....	151
Tributary 1.....	Arborwood Rd.....	151
	Brucewood Rd.....	151
Cole's Brook.....	Sandalwood Rd.....	150
	Robinwood Rd.....	147
	Hosmer St.....	143
	School St Dam.....	133
	School St.....	133
Pratt's Brook.....	Boston & Maine RR.....	143

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fort Pond Brook.....	Boston and Maine RR (21,000 ft upstream of Route 27).....	206
	Arlington St.....	204
	Route 111.....	203
	Boston & Maine RR (12,800 ft upstream of Route 27).....	202
	Central St.....	201
	Martin St.....	199
	Stow St.....	198
	Boston & Maine RR (950 ft upstream of Route 27).....	195
	Route 27.....	195
	Erikson Dam.....	194
	Boston & Maine RR (500 ft downstream of Route 27).....	181
	Cement Dam.....	176
	River St (3,450 ft downstream of Route 27).....	156
	River St (6,700 ft downstream of Route 27).....	151
	Merriam Dam.....	151
	River St (7,650 ft downstream of Route 27).....	139
	Parker St.....	135
	Laws Brook Rd.....	128
Assabet River.....	Old High St.....	146
	Powder Mill Dam.....	146
	Route 62.....	134

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary,

[FR Doc. 78-3485 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-32661]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Chesterfield, Macomb County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Chesterfield, Macomb County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show

evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP)."

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Township of Chesterfield, Macomb County, Mich.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and their final elevations for the Township of Chesterfield, Macomb County, Mich., are available for review at the lobby of the Township Hall, 501-77 North Grathiot, Mount Clemens, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Township of Chesterfield, Macomb County, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Salt River	Jefferson Ave.....	578
	Callens Rd.....	578
	23 Mile Rd.....	580
	24 Mile Rd.....	585
	Washington Ave...	591
	Interstate 94.....	595
Fish Creek	Upstream	602
	corporate limits.	
	Callens Rd.....	578
	23 Mile Rd.....	583
Auvase Creek, Sutherland-Oemig Drain.	Sass Rd.....	589
	24 Mile Rd.....	592
	Jefferson Ave.....	578
	Sugarbush Rd	579
	Graham Rd	581

Source of flooding	Location	Elevation in feet above mean sea level
Deer Creek	Cotton Rd.....	584
	Douglass Rd.....	587
	Downstream	613
	corporate limits.	
	Hagen Rd., (downstream).	614
	Hagen Rd., (upstream).	615
	Upstream	621
	corporate limits.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3486 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3446]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Township of China, St. Clair County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of China, St. Clair County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for the participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Township of China, Mich.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of China, are available for review at Township Hall, 4560 Indian Trail Road, Marine City, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Township of China, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pine River	Old Fred W. Moore Highway.	594
	King Rd.....	591
Belle River	Indian Trail.....	599
	Westrick Rd.....	610
	Trail Rd.....	616

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3487 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3562]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Township of East China, St. Clair County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for se-

lected locations in the Township of East China, St. Clair County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program. (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Township of East China, Mich.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of East China, are available for review at East China Township Hall, 298 Recor Road, St. Clair, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Township of East China, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
St. Clair River	State Hwy. M-29 and Point Dr.	580
	Puttygut Rd.....	581
Jordan Creek	Railroad Spur.....	586
	Private road.....	586
Belle River	Melner Rd	586
	Port Huron-Detroit RR.	588

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3488 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3228]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for Carroll County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Carroll County, Miss. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Carroll County, Miss.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Carroll County, are available for review at Carroll County Courthouse, Carrollton, Miss.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for Carroll County, Miss.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or

individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Sand Creek (near McCauley).	Upstream	265
	McCauley Rd.	
	Downstream	264
	McCauley Rd.	
Big Sand Creek (near North Carrollton).	George St.....	227
Potacocowa Creek.	State Hwy. No. 7..	152
Teoc Creek	State Hwy. No. 7..	133
Yalobusha River...	Avalon Bridge.....	135
	Whaley Bridge	134
	Illinois Central Gulf RR.	131
Beasley Creek.....	North corporate limits, North Carrollton.	222

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3489 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3564]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Isola, Humphreys County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Isola, Humphreys County, Miss. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Isola, Miss.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Isola, are available for review at Town Hall, Isola, Miss.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Isola, Miss.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Jackson Bayou	Illinois Central RR.	107
	Bridge Hwy 49W ..	108
Jackson Bayou Lateral.	Belzoni St	111
	Illinois Central RR.	112

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4228; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3490 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3526]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Advance, Stoddard County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Advance, Stoddard County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Advance, Stoddard County, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the City of Advance are available for review at City Clerk's Office, City Hall, Advance, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Advance, Stoddard County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ditch No. 1	At the downstream face of State Hwy. 25 & 91.	351
	At the downstream face of Vine St. West Street Bridge.	353
		354

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3491 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3451]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Olivette, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Olivette, St. Louis County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Olivette, St. Louis County, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Olivette, St. Louis County, Mo., are available for review at City Hall, Olivette, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Olive, St. Louis County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
River Des Peres.....	Arrowhead Dr. (extended).	558
	Upstream of Diehlman Rd. Bridge.	587

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3492 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3383]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Springfield, Greene County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Springfield, Greene County, Mo.

These base (100-year) flood elevations are the basis for the flood plain

management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Springfield, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Springfield, are available for review at City Hall, 830 Bloomville Street, Springfield, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Springfield, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ward Branch.....	Republ. St., Highway M.	1,218
	Corporate limits...	1,210
Dickerson Branch.....	Livingston St.....	1,227
	Evergreen St.....	1,207
	Norton St.....	1,200
	Zoo Park Rd.....	1,188
	Corporate limits...	1,159
Dolling Branch.....	Highway I-44.....	1,217
	Norton St.....	1,211
Nichols Branch.....	Orchard Crest.....	1,248
	Eldon Ave.....	1,240
North Branch, Wilsons Creek.....	Nichols St.....	1,255

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Waddill St.....	1,240
	Highway 160 bypass.....	1,220
	State St.....	1,210
	Highway 160 bypass.....	1,200
Wilson's Creek.....	Missouri Pacific RR.	1,218
	Golden Ave.....	1,212
	Corporate limits...	1,198
Jordan Creek.....	Benton Ave.....	1,272
	Main St.....	1,263
	Fort St.....	1,251
	Mount Vernon St.....	1,241
	Grand St.....	1,231
	Bennett St.....	1,222
North Branch, Jordan Creek.....	Oak Grove Ave.....	1,352
	Glenstone Ave.....	1,328
	Fremont Ave.....	1,311
	Hampton Ave.....	1,292
	Sherman Ave.....	1,288
	St. Louis & San Francisco Ry.	1,275
South Branch, Jordan Creek.....	Patterson Ave.....	1,329
	East Traffic Way.....	1,313
	Glenstone Ave.....	1,304
	Fremont Ave.....	1,289
	Sherman Ave.....	1,275
Fassnight Creek.....	Jefferson Ave.....	1,274
	Thelma St.....	1,253
	Port Ave.....	1,240
South Creek.....	National Ave.....	1,301
	Campbell Ave.....	1,273
	Fort Ave.....	1,255
	Scenic Avenue and Missouri Pacific RR.	1,228
	Golden Ave.....	1,209
Galloway Creek.....	Battlefield Rd.....	1,206
	Laguna Ave.....	1,204
	Barton St.....	1,189
	Republic Street, Highway M.	1,177
	U.S. Highways 60 and 65.	1,156
James River.....	Corporate limits (upstream).	1,158
	River Rd.....	1,155
	Confluence with Galloway Creek.	1,152

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3493 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3290]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Parkville, Platte County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Parkville, Platte County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Parkville, Mo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Parkville, are available for review at City Hall, 8701 River Park Drive, Parkville, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Parkville, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Missouri River	Upstream corporate limits.	763
	Downstream corporate limits.	761
White Aloe branch.	12th St	771
	16th St	762

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Highway M-9	762
	Burlington Northern RR.	762

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (39 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3494 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-35241]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for The Town of Pittsfield, Merrimack County, N.H.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Pittsfield, Merrimack County, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Pittsfield, Merrimack County, N.H.

ADDRESS: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for Selectmen's Office, Town Hall, Main Street, Pittsfield, N.H., are available for review at the town of Pittsfield.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations

of flood elevations for the town of Pittsfield, Merrimack County, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selection locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Suncook River	5,960 ft downstream of Webster Mills Rd.	351
	At Webster Mills Rd.	396
	1,425 ft upstream of Webster Mills Rd.	409
	5,600 ft upstream of Webster Mills Rd.	427
	At confluence of Gas House Brook.	439
	1,750 ft downstream of Main St.	448
	100 ft downstream of Main St.	459
	At Pittsfield Dam	481
	At Route 107 bridge.	482
	3,000 ft upstream of Route 107 bridge.	483
	9,600 ft upstream of Route 107 bridge.	491

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (39 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3495 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3525]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW**Final Flood Elevation Determination for The Town of Epsom, Merrimack County, N.H.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Epsom, Merrimack County, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Epsom, Merrimack County, N.H.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the Town of Epsom are available for review at the Town Hall, Route 202, Epsom, N.H.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Epsom, Merrimack County, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Suncook River	Confluence of Fowler Brook.	305
	210 ft downstream of Short Falls Bridge.	308
	At confluence with the west channel of Suncook River.	311
	1,850 ft downstream of Huckins Mill Dam.	315
	210 ft upstream of Huckins Mill Dam.	335
	210 ft downstream of Route 4 Bridge.	339
	At town boundary	344
	3,170 ft downstream of Huckins Mill Dam.	313
	2,000 ft downstream of Huckins Mill Dam.	318
	110 ft downstream of Huckins Mill Dam.	323
West channel of Suncook River.	At railroad bridge near confluence with Suncook River.	339
	580 ft downstream of Black Hall Road Bridge.	340
	At confluence with Lockes Brook.	357
	1,585 ft upstream of confluence of Lockes Brook.	372
	At Center Hill Road Bridge.	398
	422 ft upstream of the confluence of Blake Brook.	409
	At a private dam	412
	1,055 ft upstream of confluence of Blake Brook.	430
	105 ft downstream of Cass Road Bridge.	437
	105 ft upstream of Cass Road Bridge.	440
Little Suncook River.	265 ft downstream of confluence with Gulf Brook.	443
	At confluence with Gulf Brook.	445
	2,425 ft upstream of confluence with Gulf Brook.	485
	635 ft downstream of Route 107 Bridge.	506
	75 ft downstream of Route 107 Bridge.	510
	53 ft downstream of Northwood Lake Dam.	

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	53 ft upstream of Northwood Lake Dam.	519
	At town boundary	519

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3496 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-2747]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW**Final Flood Elevation Determinations for the Town of Hanover, Grafton County, N.H.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Hanover, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Hanover, N.H.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Hanover, are available for review at Town Hall, Hanover, N.H.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Hanover, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River	Route 120	389
Mink Brook	King Rd.	793
	Great Hollow Rd.	644
	Buck Rd.	504
	South Main St.	390
Monahan Brook	Dogford Rd.	846
	Etna Rd.	818
Slade Brook	River Rd.	398

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: September 8, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 70-3497 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-2746]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Borough of Far Hills, Somerset County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Far Hills, Somerset County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in

order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Borough of Far Hills, N.J.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Far Hills, are available for review at Borough of Far Hills, Far Hills, N.J.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Borough of Far Hills, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North branch Raritan River	Smith Picnic Bridge	237
	ConRail	160
	Pespack Rd.	150
	Main St.—U.S.	137
	202	
Moggy Brook	Layton Rd.*	243
Tributary A	Layton Rd.	266
	I-287 West culvert.*	233
	Private Rd. (station location 142).	163
	Private road (station location 122).	160
Mine Brook	ConRail*	184
	Dam*	158
	Private Way Bridge.*	155

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tributary B	Far Hills Rd.*	150
	Abandoned road.*	265
	Driveway (station location 866).*	224
	Dam (station location 867).*	209
	Route 202*	175
	Dam station (location 315).*	171
	ConRail*	157
	Far Hills Rd.	146
Tributary C	Ravine Lake Rd.	227
	Driveway	210
Tributary D	Dam*	265
	Ravine Lake Rd.*	246

* Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: October 21, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3498 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3121]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Babylon, Suffolk County, N.Y.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of final rule.

SUMMARY: The Federal Insurance Administration has erroneously published at 42 FR 58494 on November 9, 1977, the final flood elevation determination for the town of Babylon, Suffolk County, N.Y. This notice will serve as a cancellation of that publication. A new notice of final flood elevation determination will be published in the near future.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3499 Filed 2-9-78; 8:45 am]

[4210-01]

[Docket No. FI-3146]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for The Village of Fort Edward, Washington County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Fort Edward, Washington County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the village of Fort Edward, Washington County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for village of Fort Edward are available for review at the Village Clerk's Office, 118 Broadway, Fort Edward, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the village of Fort Edward, Washington County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been

provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hudson River (east and west channel).	At south corporate limits.	128
	At Brightwood St. (extended) 3,080 ft. upstream from State Route 197.	130
	At north corporate limits.	134
Bond Creek	At Baldwin Ave	128

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-3500 Filed 2-9-78; 8:45 am]

[4510-27]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION

PART 522—EMPLOYMENT OF LEARNERS

Increases in Subminimum Wage Rates for Learners in Certain Industries

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On December 16, 1977, a notice was published in the FEDERAL REGISTER which proposed increasing the wage rates paid learners by an amount equal to the increase in the statutory minimum wage effective under the 1977 Amendments to the Fair Labor Standards Act. This notice provided for public comment until December 27, 1977. No unfavorable comments were received. Therefore, the wage rates as proposed are adopted.

EFFECTIVE DATE: March 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Arthur H. Korn, Director, Division of Special Minimum Wages, Wage and Hour Division, U.S. Department

of Labor, 200 Constitution Avenue NW., Room C4316, Washington, D.C. 20210, 202-523-8727.

SUPPLEMENTARY INFORMATION: On December 16, 1977, there was published in the FEDERAL REGISTER (42 FR 63434-6) a notice of proposed rule making setting forth the proposed increases in the subminimum wage rates for learners under Title 29 of the Code of Federal Regulations, Part 522. These increases reflect the increases in the statutory minimum wage under the 1977 Amendments to the Fair Labor Standards Act. Interested parties were given the opportunity to submit, not later than December 27, 1977, data, views and recommendations regarding the proposed wage rates.

No unfavorable comments have been received, and the proposed wage rates are hereby adopted without change.

Accordingly, §§ 522.24, 522.35, 522.43, 522.65 and 522.85 of Title 29 are amended as proposed in the FEDERAL REGISTER Notice of December 16, 1977 and as authorized under Section 14 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, Secretary's Order No. 16-75, dated November 25, 1975 (40 FR 55913), and Employment Standards Order No. 76-2, dated February 23, 1976 (41 FR 9016).

This document was prepared under the direction and control of Xavier M. Vela, Administrator, Wage and Hour Division.

1. § 522.24 of Part 522, Title 29, Code of Federal Regulations is amended to read as follows:

§ 522.24 Special minimum wage rates.

(a) The special minimum rates of learners employed in occupations for which a 320-hour period is authorized under § 522.23(a) shall during that period be not less than \$2.50 an hour through December 31, 1978; not less than \$2.75 an hour through December 31, 1979; not less than \$2.95 an hour through December 31, 1980; and not less than \$3.20 an hour thereafter.

(b) The rates for experienced workers in any one of the occupations shown in § 522.23(a) for which a 320-hour learning period is authorized, who are being retrained under the terms of a learner certificate in any other occupation shown in that paragraph having such a 320-hour maximum period, shall be not less than \$2.50 an hour for the first 160 hours and not less than \$2.55 an hour for the remaining 160 hours through December 31, 1978; not less than \$2.75 an hour for the first 160 hours and not less than \$2.80 an hour for the remaining 160 hours through December 31, 1979; not less than \$2.95 an hour for the first 160 hours and not less than \$3 an hour for the remaining 160 hours through December 31, 1980; and

not less than \$3.20 an hour for the first 160 hours and not less than \$3.25 an hour for the remaining 160 hours thereafter.

(c) The rates for learners employed in the occupation of final inspection of assembled garments under § 522.23(b) shall be not less than \$2.55 an hour during the authorized 160-hour learning period through December 31, 1978; not less than \$2.80 an hour during such authorized learning period through December 31, 1979; not less than \$3 an hour during such authorized learning period through December 31, 1980; and not less than \$3.25 an hour during such authorized learning period thereafter.

(d) The rates for learners employed in any occupation, other than final inspection of assembled garments, for which a 160-hour learning period is authorized in § 522.23 (a) or (b) shall be not less than \$2.50 an hour through December 31, 1978; not less than \$2.75 an hour through December 31, 1979; not less than \$2.95 an hour through December 31, 1980; and, not less than \$3.20 an hour thereafter.

2. § 522.35 of Part 522, Title 29, Code of Federal Regulations is amended to read as follows:

§ 522.35 Special minimum wage rates.

(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than \$2.55 an hour through December 31, 1978; not less than \$2.80 an hour through December 31, 1979; not less than \$3 an hour through December 31, 1980; and, not less than \$3.25 an hour thereafter.

3. § 522.43 of Part 522, Title 29, Code of Federal Regulations is amended to read as follows:

§ 522.43 Learner occupations, learning periods and special minimum wage rates.

(a) * * *

(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than \$2.50 an hour for the first 480 hours and at not less than \$2.575 for the remaining 480 hours through December 31, 1978; not less than \$2.75 an hour for the first 480 hours and not less than \$2.825 for the remaining 480 hours through December 31, 1979; at not less than \$2.95 an hour for the first 480 hours and at not less than \$3.025 for the remaining 480 hours through December 31, 1980; and not less than \$3.20 for the first 480 hours and not less than \$3.275 for the remaining 480 hours thereafter.

(2) In the seamless branch, pairing (women's nylon) and mending (women's nylon), for 720 hours at not

less than \$2.50 an hour for the first 360 hours and at not less than \$2.575 for the remaining 360 hours through December 31, 1978; not less than \$2.75 an hour for the first 360 hours and not less than \$2.825 an hour for the remaining 360 hours through December 31, 1979; not less than \$2.95 an hour for the first 360 hours and not less than \$3.025 an hour for the remaining 360 hours through December 31, 1980; and not less than \$3.20 an hour for the first 360 hours and not less than \$3.275 an hour for the remaining 360 hours thereafter.

(3) In the seamless branch, topping, wetting, and mending (other than women's nylon), for 480 hours at not less than \$2.50 an hour through December 31, 1978; not less than \$2.75 an hour through December 31, 1979; not less than \$2.95 an hour through December 31, 1980; and, not less than \$3.20 an hour thereafter.

(4) In the seamless branch, boarding (women's nylon), folding (women's nylon and rayon), and pairing (other than women's nylon), for 360 hours, at not less than \$2.50 an hour through December 31, 1978; not less than \$2.75 an hour through December 31, 1979; not less than \$2.95 an hour through December 31, 1980; and not less than \$3.20 an hour thereafter.

(5) In the seamless branch, knitting (except transfer top), seaming, examining and inspection, folding (other than women's nylon and rayon), and boarding (other than women's nylon), for 240 hours, at not less than \$2.50 an hour through December 31, 1978; at not less than \$2.75 an hour through December 31, 1979; and not less than \$2.95 an hour through December 31, 1980; and not less than \$3.20 an hour thereafter.

(6) In the full-fashioned branch, seaming (leg and foot), for 960 hours, at not less than \$2.55 an hour for the first 480 hours and \$2.625 an hour for the remaining 480 hours through December 31, 1978; at not less than \$2.80 an hour for the first 480 hours and \$2.875 an hour for the remaining 480 hours through December 31, 1979; at not less than \$3 an hour for the first 480 hours and \$3.075 an hour for the remaining 480 hours through December 31, 1980; and at not less than \$3.25 an hour for the first 480 hours and at not less than \$3.325 an hour for the remaining 480 hours thereafter.

(7) In the full-fashioned branch, pairing and mending, for 720 hours at not less than \$2.55 an hour for the first 360 hours and not less than \$2.625 an hour for the remaining 360 hours through December 31, 1978; at not less than \$2.80 an hour for the first 360 hours and at not less than \$2.875 an hour for the remaining 360 hours through December 31, 1979; at not less than \$3 an hour for the first 360 hours and at not less than \$3.075

an hour for the remaining 360 hours through December 31, 1980; and at not less than \$3.25 an hour for the first 360 hours and at not less than \$3.325 an hour for the remaining 360 hours thereafter.

(8) In the full-fashioned branch, boarding and folding, for 360 hours, at not less than \$2.55 an hour through December 31, 1978; at not less than \$2.80 an hour through December 31, 1979; at not less than \$3 an hour through December 31, 1980; and at not less than \$3.25 an hour thereafter.

(9) In the full-fashioned branch, examining and inspecting, and seaming (sewing—other than leg and foot), for 240 hours at not less than \$2.55 an hour through December 31, 1978; at not less than \$2.80 an hour through December 31, 1979; at not less than \$3 an hour through December 31, 1980; and at not less than \$3.25 an hour thereafter.

(d) a worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one half of the learning period authorized for the occupation at not less than \$2.575 an hour in the seamless branch and at not less than \$2.625 an hour in the full-fashioned branch through December 31, 1978; at not less than \$2.825 an hour in the seamless branch and at not less than \$2.875 an hour in the full-fashioned branch through December 31, 1979; at not less than \$3.025 an hour in the seamless branch and at not less than \$3.075 an hour in the full-fashioned branch through December 31, 1980; and, at not less than \$3.275 an hour in the seamless branch and at not less than \$3.325 an hour in the full-fashioned branch thereafter. A worker who has partial training in any authorized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than \$2.575 an hour in the seamless branch and at not less than \$2.625 an hour in the full-fashioned branch through December 31, 1978; at not less than \$2.825 an hour in the seamless branch and at not less than \$2.875 an hour in the full-fashioned branch through December 31, 1979; at not less than \$3.025 an hour in the seamless branch and at not less than \$3.075 an hour in the full-fashioned branch through December 31, 1980; and, at not less than \$3.275 an hour in the seamless branch and at not less than \$3.325 an hour in the full-fashioned branch thereafter; or (2) the balance of the number of hours permitted as a learning period for the occupation to which he or she is being transferred, at the applicable special minimum rates set forth in

paragraph (a) of this section: *Provided, however*, That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupation of folding or inspection; and (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned branch or from the full-fashioned branch to the seamless branch, if the worker is employed in the same occupation as that in which he or she has been previously employed.

4. § 522.65 of Part 522, Title 29, Code of Federal Regulations is amended to read as follows:

§ 522.65 Special minimum wage rates.

(a) The special minimum wage rates which may be authorized in special certificates issued in the glove industry shall be as follows: (1) In the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, not less than \$2.50 an hour for the first 320 hours and at not less than \$2.60 an hour for the remaining 160 hours through December 31, 1978; at not less than \$2.75 an hour for the first 320 hours and at not less than \$2.85 an hour for the remaining 160 hours through December 31, 1979; at not less than \$2.95 an hour for the first 320 hours and at not less than \$3.05 an hour for the remaining 160 hours through December 31, 1980; and at not less than \$3.20 an hour for the first 320 hours and not less than \$3.30 an hour for the remaining 160 hours thereafter. (2) In the work glove branch of the industry, not less than \$2.50 an hour for the first 320 hours and not less than \$2.55 an hour for the remaining 160 hours through December 31, 1978; at not less than \$2.75 an hour for the first 320 hours and not less than \$2.80 an hour for the remaining 160 hours through December 31, 1979; at not less than \$2.95 an hour for the first 320 hours and not less than \$3.00 an hour for the remaining 160 hours through December 31, 1980; and, at not less than \$3.20 an hour for the first 320 hours and not less than \$3.25 an hour for the remaining 160 hours.

5. § 522.85 of Part 522, Title 29, Code of Federal Regulations is amended to read as follows:

§ 522.85 Special minimum wage rates.

(a) The special minimum wage rates which may be authorized in special certificates issued in the cigar industry

shall be as follows: (1) In the occupations of cigar machine operating and cigar packing, not less than \$2.50 an hour through December 31, 1978; not less than \$2.75 an hour through December 31, 1979; at not less than \$2.95 an hour through December 31, 1980; and not less than \$3.20 an hour thereafter. (2) In the occupations of hand rolling and hand bunch making, not less than \$2.50 an hour for the first 480 hours and \$2.575 an hour for the second 480 hours through December 31, 1978; at not less than \$2.75 an hour for the first 480 hours and \$2.825 for the second 480 hours through December 31, 1979; not less than \$2.95 an hour for the first 480 hours and \$3.025 an hour for the second 480 hours through December 31, 1980; and not less than \$3.20 an hour for the first 480 hours and \$3.275 an hour for the second 480 hours thereafter. (3) In the occupation of hand making Italian Stogies, not less than \$2.50 an hour for the first 320 hours and \$2.575 an hour for the second 320 hours through December 31, 1978; not less than \$2.75 an hour for the first 320 hours and \$2.825 an hour for the second 320 hours through December 31, 1979; not less than \$2.95 an hour for the first 320 hours and \$3.025 an hour for the second 320 hours through December 31, 1980; and not less than \$3.20 an hour for the first 320 hours and \$3.275 an hour for the second 320 hours thereafter. (4) In the occupations of hand stripping and machine stripping, not less than \$2.50 an hour through December 31, 1978; not less than \$2.75 an hour through December 31, 1979; not less than \$2.95 an hour through December 31, 1980; and not less than \$3.20 an hour thereafter.

(Secs. 11, 14, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501, 602, 80 Stat. 843, 844 (29 U.S.C. 211, 214).)

Signed at Washington, D.C., this 2nd day of February 1978.

XAVIER M. VELA,
Administrator, Wage and Hour
Division, U.S. Department of
Labor.

[FR Doc. 78-3831 Filed 2-10-78; 8:45 am]

[4510-27]

PART 525—EMPLOYMENT OF HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

Increases in Monetary Tests for Qualifying as a Work Activities Center

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Fair Labor Standards Act permits the employment of handicapped clients, whose physical or

mental impairment is so severe as to make their productive capacity inconsequential, in work activities centers (centers planned and designed exclusively to provide therapeutic activities for such clients) at wages which are less than the minimum applicable under section 6 of the Act under regulations of the Secretary of Labor. Among other things, the regulations set monetary criteria for qualifying as a work activities center. Since these criteria are based on the minimum wage, it is necessary to amend regulations for employment of handicapped clients in sheltered workshops to increase the monetary tests to reflect the changes in the statutory minimum wage resulting from the 1977 Amendments to the Act.

EFFECTIVE DATE: March 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Arthur H. Korn, Director, Division of Special Minimum Wages, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4316, Washington, D.C. 20210, 202-523-8727.

SUPPLEMENTARY INFORMATION: Section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) authorizes the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide for the employment of handicapped workers at subminimum wages under regulations of the Secretary. Title 29 of the Code of Federal Regulations, Part 525, establishes the terms and conditions of such employment, including criteria for qualifying as a work activities center. The concept of work activities centers was established under the 1966 amendments to the Act. At that time two sets of monetary criteria were established to determine whether the handicapped clients of a workshop or a part of a workshop met the test of "inconsequential" productive capacity.

One test was average annual client productivity (total annual earned income of the work activities center less the cost of material divided by the average number of clients employed during the year) and the other was average annual client earnings (total annual client earnings divided by average number of clients). The latter test was limited to centers which paid piece rates to more than half of the clients in the work activities center. A workshop meeting either test would qualify as a work activities center. The original formula for average annual earnings was developed by assuming a 1,500-hour work year (30 hours a week for 50 weeks) and average earnings of 25 percent of the minimum wage. The original average annual productivity formula (earned income of the workshop) used the average annual earn-

ings and added a markup in order to take into account overhead over the labor rate for work performed by the work activities center.

The monetary tests were subsequently adjusted to reflect each increase in the minimum wage by increasing the test amounts by the same percentage as the increase in the minimum wage. On December 16, 1977 (42 FR 35715), there was published a proposal to make the same adjustment to reflect minimum wage increases under the 1977 Amendments and rounding to the nearest \$25. It is necessary to amend § 525.2(c) to accomplish this change.

A comment period ending December 27, 1977, was allowed due to the time constraints of the 1977 Amendments to the Fair Labor Standards Act. No comments were received during this period.

As necessitated by the Fair Labor Standards Amendments of 1977 and as authorized under section 14 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, Secretary's Order No. 16-75, dated November 25, 1975 (40 FR 55913), and Employment Standards Order No. 76-2, dated February 23, 1976 (41 FR 9016), § 525.2(c) of Title 29 shall be amended to reflect the statutory increases.

This document was prepared under the direction and control of Xavier M. Vela, Administrator, Wage and Hour Division.

Accordingly, § 525.2(c) of Part 525, Title 29, Code of Federal Regulations, is amended as follows:

§ 525.2 Definitions.

(c) "Work activities center" shall mean a workshop, or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities (such as activities where the focus is on teaching the basic skills of living), and any purposeful activity so long as work or production is not the main purpose. No sheltered workshop or separate department thereof shall qualify as a work activities center if the average productivity per handicapped worker is \$1,400 (\$1,550 effective January 1, 1979, \$1,650 effective January 1, 1980, and \$1,775 effective January 1, 1981) or more per year as measured by dividing the total annual earned income of the work program, less the cost of purchased materials used, by the average number of clients in the work program, or, if wage payments are primarily at piece rates, the

average annual labor rate per client is \$1,000 (\$1,100 effective January 1, 1979, \$1,175 effective January 1, 1980, and \$1,275 effective January 1, 1981) or more as measured by dividing the total annual wages of the clients by the average number of clients in the work program. (The average number of clients shall be determined by taking the average of the total number of clients in the work program on the last day of each quarter in the previous fiscal year, provided such average is representative of the average number of clients employed during the entire year.) No individual worker whose productivity substantially exceeds this average shall be employed at less than the statutory minimum wage under a work activities center certificate. (A handicapped worker, whose productivity substantially exceeds the average, may be certificated under Regulations, Part 524 of this chapter, in rare and unusual cases where necessary to avoid extreme hardship, if he is unable to earn the statutory minimum because of his handicap, and if his production and earnings are included in the averages provided in this paragraph.) Where information is not available for a year, a temporary certificate for not more than 6 months may be issued based on the limited information available, if it is represented that the center expects and has good reason to believe that the conditions hereinabove specified will be satisfied when 1 year's data are available. Information to be considered will include the severity of disability of the handicapped workers employed, or other pertinent factors.

(Secs. 11, 14, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501, 602, 80 Stat. 843, 844 (29 U.S.C. 211, 214).)

Signed at Washington, D.C., on this 2d day of February 1978.

XAVIER M. VELA,
Administrator, Wage and Hour
Division, U.S. Department of
Labor.

[FR Doc. 78-3830 Filed 2-9-78; 8:45 am]

[4510-26]

CHAPTER XVII—OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION, DEPARTMENT OF
LABOR

PART 1952—APPROVED STATE PLANS FOR
ENFORCEMENT OF STATE STANDARDS

Approval of Supplements to Hawaii Plan

AGENCY: Occupational Safety and
Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends
regulations to acknowledge completion

of four developmental steps under the Hawaii Occupational Safety and Health Plan, approved December 28, 1973 (39 FR 1010). The completed steps are: Administrative regulations, a management information system, and certain amendments to the Hawaii Occupational Safety and Health Law.

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION
CONTACT:

Majorie N. Sauber, Office of State
Programs, Occupational Safety and
Health Administration, Room N-
3608, 200 Constitution Avenue NW.,
Washington, D.C. 20210, 202-523-
8041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 6, 1976, a notice was published in the FEDERAL REGISTER (41 FR 32912) acknowledging the receipt of the supplements containing the procedural regulations, the Management Information Systems, and legislative amendments in Act 95 of the 1976 Hawaii legislative session, and their availability for public comment.

DESCRIPTION OF SUPPLEMENTS

a. *Procedural rules.* These rules provide procedures for various operations of the Hawaii Division of Occupational Safety and Health, as promulgated in September 1972, and revised in January 1974. Six chapters of the rules were included in the supplement as follows:

- (1) Chapter 101—General Provisions and Definitions;
- (2) Chapter 102—Regulations on Inspections, Citations and Proposed Penalties, corresponding to the Federal regulations in 29 CFR Part 1903;
- (3) Chapter 103—Regulations for Recording and Reporting Occupational Injuries and Illnesses, corresponding to the Federal regulations in 29 CFR Part 1904;
- (4) Chapter 104—Rules of Practice for variances, corresponding to the Federal regulations in 29 CFR Part 1905;
- (5) Chapter 105—Regulations concerning Administration Witnesses and Documents in Private Litigation, corresponding to 29 CFR Part 1906; and
- (6) Regulations for Promulgating, Modifying or Revoking Occupational Safety and Health Standards, corresponding to the Federal Regulations in 29 CFR Part 1911.

b. *Hawaii management information system.* The system was fully computerized and in operation by December 31, 1975. It produces information for internal management reports for the Division of Occupational Safety and Health as well as for the quarterly reports required by the Occupational Safety and Health Administration.

c. *Amendments to the Hawaii enabling legislation* (Chapter 396, *Hawaii Revised Statutes*). The legislation, Act 95, was passed by the Hawaii Legislature in its 1976 session and became effective on May 13, 1976. Among other things, the legislation provides for the following:

(1) The definition of the Director of Industrial Relations has been broadened to include his designee and the definition of an "Employer of the State" has been added which includes officers and employees of the Department of Industrial Relations and persons acting on behalf of the Department in an official capacity (section 396-3, H.R.S., as amended);

(2) Procedures and criteria for the issuance of emergency temporary standards are prescribed and criteria for the granting of a variance are also prescribed (section 396-4(a), H.R.S., as amended);

(3) A provision has been added providing that an employee of the State acting within the scope of his employment will be represented by the State Attorney General in any civil action against that employee growing out of the administration or enforcement of the Hawaii Occupational Safety and Health Law (section 396-4(b)(8), H.R.S., as amended);

(4) The enabling legislation is clarified to provide that the Division of Occupational Safety and Health is authorized to issue citations for violations of the law or standards as well as issue orders (section 396-4(d), H.R.S., as amended);

(5) The requirement concerning the posting of citations and notices is clarified by requiring that they be posted at the worksite involved or at a place where notices to employees are normally posted (section 396-10(m), H.R.S., as amended); and

(6) The abatement provisions of the Hawaii legislation have been revised to provide, among other things, that an employer may file a petition for modification of abatement after the twenty day period for contesting the citation has expired and employees of an employer may challenge the reasonableness of an abatement period (section 396-11, H.R.S., as amended).

ISSUES

No public comments or requests for a hearing were received during the period provided for public comment. However, a number of issues on the first three supplements were discerned during review of the supplements by OSHA and the State responded to these issues as follows:

a. *Discrimination protections*. Section 396-8 of the Hawaii Revised Statutes provides that no employer may discriminate against an employee for exercising rights under the Hawaii Law. This was found to be narrower

than the comparable Federal provision which provides that no person shall discriminate against an employee for such exercise of rights (section 11(c) of the Act, 29 U.S.C. 660(c)). By a letter dated December 14, 1976, from E. R. Turner, Administrator, Division of Occupational Safety and Health, to Maria Barcos, Project Officer, Occupational Safety and Health Administration, the State has made a commitment to amend section 396-8 of the Hawaii Revised Statutes to substitute "person" for "employer".

b. *Recordkeeping regulations*. The Hawaii Recordkeeping Regulations, Chapter 103 of the Administrative Rules of Procedure, were found to need some revisions to be consistent with the Federal recordkeeping requirements. Among the revisions required were specification of the forty-eight hour requirement for the reporting of accidents resulting in fatalities or multiple hospitalizations and the requirement that employers may request exceptions to the recordkeeping and reporting requirements only from the United States Bureau of Labor Statistics. By a letter dated September 7, 1976, from Joshua C. Agsalud, Director, Hawaii Department of Labor and Industrial Relations, to Maria Barcos, the State agreed to make the necessary changes in its recordkeeping regulations.

c. *Petitions for modification of abatement dates*. It was discerned that the State did not provide procedures for petitions for modification of abatement dates and provisions concerning the right of employees or their representatives to contest the reasonableness of abatement periods in its procedural regulations. By letters dated December 14, 1976 and March 7, 1977, from E. R. Turner to Maria Barcos and Gabriel Gillotti, Regional Administrator, the State has agreed to amend Chapter 102 of its procedural regulations to provide these provisions concerning abatement petitions.

d. *Special temporary variances*. The variance regulations provide for a special temporary variance for which there is no comparable Federal provision. Section 104.9 provides that a special temporary variance may be granted for a particular job of limited duration, inability to comply with a standard, or any other legitimate reason for not being able to comply with a standard. It was felt that this provision might weaken the stringent requirements for the consideration and granting of temporary variances. According to the State, the section is designed for specific or unusual jobs of short duration and would be granted only if equivalent or superior protection is provided to employees as compared to that required by the standard. The section is also designed to apply to situations where existing

standards might lead employers into procedures that are inferior, and perhaps unsafe, in relation to alternatives available; e.g. highly unusual or dangerous working conditions. By a telegram dated June 15, 1977, and a letter dated July 15, 1977, from Joshua C. Agsalud to Raymond E. Donnelly, Chief State Programs Operations Staff, the State has agreed to amend § 104.9 of its variance regulations to provide that such a temporary variance will be granted under specified conditions for equivalent or superior employee protection to that afforded by standards and that the procedure approved will be the safest feasible solution after all relevant factors are considered. Because of the novelty of these revisions, they are approved subject to close monitoring and evaluation by the Occupational Safety and Health Administration. If it is found that adequate employee protection is not provided, the State will be required to amend its variance regulations to delete this provision.

LOCATION OF THE PLAN AND ITS SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N-3608, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 9470, 450 Golden Gate Avenue, San Francisco, Calif. 94210; and the Department of Labor and Industrial Relations, Room 308, 825 Mililani Street, Honolulu, Hawaii 96813.

PUBLIC PARTICIPATION

Interested persons were afforded thirty days to submit written comments or request a hearing concerning the supplements regarding the Administrative Rules of Procedure, the Management Information System and the amendments to the enabling legislation. No public comments or request for a hearing were received.

DECISION

After careful consideration, the Hawaii plan supplements with assurances described above are hereby approved under Part 1953 of this chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In accordance with this decision, Subpart Y of 29 CFR Part 1952 is amended:

(1) By adding new paragraphs (f) and (g).

§ 1952.314 Completed developmental steps.

(f) The Rules of Procedure of the Hawaii Division of Occupational Safety and Health were promulgated in September, 1972, and revised in January, 1974. These rules include: Regulations on inspections, citations, and proposed penalties (chapter 102); regulations for recording and reporting occupational injuries and illnesses (chapter 103); rules or practice for variances (chapter 104); regulations concerning administration witnesses and documents in private litigation (chapter 105); and regulations for promulgating, modifying, or revoking occupational safety and health standards (chapter 106).

(g) In accordance with 29 CFR 1952.313(c), as amended, the Hawaii Management Information System was completed and in operation by December 31, 1975.

2. By amending paragraph (a). The period is changed to a comma and the following is added thereafter: "and amended by Act 95 of the 1976 Hawaii Legislative Session."

(Secs. 8(g)(2), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g)(2), 667).)

Signed at Washington, D.C. this 31st day of January 1978.

EULA BINGHAM
Assistant Secretary
of Labor.

[FR Doc. 78-3812 Filed 2-9-78; 8:45 am]

[3410-11]

Title 36—Parks, Forests, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 254—LANDOWNERSHIP

Subpart B—National Forest Townsites

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth regulations governing the set-aside and designation of tracts of land from National Forest System lands for townsite development. The purpose of the new regulations is to provide for implementation of the National Forest townsite provisions in the Federal Land Policy and Management Act.

EFFECTIVE DATE: February 10, 1978.

FOR FURTHER INFORMATION CONTACT:

George Liddicoatt, Lands Staff, Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013, 703-235-8107.

SUPPLEMENTARY INFORMATION: On July 27, 1977, there was published

in the FEDERAL REGISTER (36 CFR 38193) a notice of proposed rulemaking setting forth the proposed implementation of the National Forest Townsite Act in the 11 Western States and Alaska. Interested parties were given the opportunity to submit, not later than September 12, 1977, comments and recommendations regarding the procedure for designating a tract of National Forest System land as a townsite.

No unfavorable comments have been received, and the proposed procedure for designating townsites is hereby adopted with changes as are set forth below.

The Department of Agriculture has determined that the publication of this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is not required.

Therefore 36 CFR Chapter II is amended by adding the following new Part 254, Subpart B, National Forest Townsites.

Signed at Washington, D.C. on February 3, 1978.

RICHARD L. DUESTERHAUS,
Acting Assistant Secretary.

Subpart B—National Forest Townsites

- Sec.
254.20 General.
254.21 Definitions.
254.22 Applications.
254.23 Examination of tract and processing application.
254.24 Public notice of intention to designate.
254.25 Survey and appraisals.
254.26 Deeds.
254.27 Standards.
254.28 Delegation of authority.

AUTHORITY.—Pub. L. 85-569, 72 Stat. 438 as amended by sec. 213, Pub. L. 94-579, 90 Stat. 2743.

Subpart B—National Forest Townsites

§ 254.20 General.

(a) When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such

area for sale to a governmental subdivision at a price not less than the fair market value.

(b) Conveyances will be limited to essential community needs resulting from internal growth and from the need to improve and modernize community facilities and services. The regulation of this subpart establishes procedures for processing townsite applications and sets standards for the enactment, maintenance, and enforcement of local zoning ordinances. These ordinances will ensure that any land so conveyed will be controlled by the governmental subdivision so that, in the judgment of the Secretary, the use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands.

§ 254.21 Definitions.

The following definitions apply to this subpart:

(a) "Eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(b) "Applicant" means the designated official(s); authorized to do business in the name of a county, city, or local governmental subdivision recognized under State law, who makes application in accordance with § 254.22.

§ 254.22 Applications.

(a) An applicant may request transfer of not more than 640 acres nor less than 5 acres of National Forest System land by letter, ordinance, or resolution. The application shall be filed with the District Ranger or the Forest Supervisor for the National Forest area in which the lands are situated.

(b) The application must be accompanied by:

- (1) A precise description of the land desired;
- (2) A development plan, consisting of a narrative statement and map description;
- (3) Evidence that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership; and
- (4) A proposed zoning ordinance setting forth specific standards in accordance with § 254.27.

§ 254.23 Examination of tract and processing application.

(a) Upon receipt of an application meeting the requirements of § 254.22, the Forest Supervisor will:

- (1) Determine whether mineral claims, special land uses, or Forest Service administrative facilities exist on the tract requested.
- (2) Follow the Forest Service NEPA guidelines to assess the environmental

impact of the applicant's proposed development plan on the area.

(b) Any area on which there are pre-existing mineral claims or special land uses, or which is required for administrative purposes, will not be included in a townsite designation until the following applicable condition(s) is met:

(1) The claim(s) is either removed or excluded;

(2) Arrangements are made for continuance or discontinuance of special uses; and/or

(3) A satisfactory alternative location is available for the administrative site.

(c) When it has been determined that no valid conflicts exist with mineral claims, special uses or administrative needs, and the requirements of NEPA have been met pursuant to Forest Service guidelines, the application will be forwarded through channels to the Secretary for written approval relative to conformance with the applicable standards of § 254.27. Within 60 days following submission, the applicant will be notified of the Secretary's approval or disapproval of the application and zoning ordinance or amendment thereto. If additional time is required, the applicant will be advised of the expected date of decision.

§ 254.24 Public notice of intention to designate.

(a) When the Secretary has determined that the community needs the requested area and that the community's objectives outweigh the public objectives and values served by continued Federal ownership, the Regional Forester will prepare:

(1) A news release for wide distribution in the State or States affected by the townsite; and

(2) A notice to be inserted weekly for 4 consecutive weeks in a newspaper having circulation in the community to be affected by the townsite.

(b) The notice should include a description of the area, name of the community or governmental body making the application, and copies of the zoning ordinance and development plan proposed for the townsite. A period of 45 days will be allowed in which public comments may be filed.

§ 254.25 Survey and appraisal.

Townsites designated by the Secretary of Agriculture will be surveyed by a qualified surveyor, licensed in the State in which the townsite is located or by the Forest Service, to standards required in the Manual of Surveying Instructions, 1973, United States Department of the Interior, Bureau of Land Management. The survey will be submitted for review and approval to the appropriate Forest Service regional land surveyor. Upon designation as a townsite, the Forest Service or the

applicant will survey, mark, and post the property boundary. The Forest Service will determine the appraised fair market value of the townsite.

§ 254.26 Deeds.

Title to the townsite will be conveyed to the governmental body filing the application by quitclaim deed executed by the Secretary of Agriculture or his designee. Executed deeds will be held by the Forest Supervisor for delivery to the governmental body upon adoption of a valid zoning ordinance and development plan which conforms to the standards contained in § 254.27 and upon notice from the Regional Fiscal Agent that payment has been received in full for the townsite.

§ 254.27 Standards.

(a) *Applicability.* The land use standards set forth in this section apply to each townsite designated by the Secretary in accordance with § 254.20, paragraph (a) and section 213 of the Federal Land Policy and Management Act of 1976.

(b) *Changes in standards.* Changes in and addition to the standards may be made from time to time by the local government subdivision with concurrence by the Forest Service.

(c) *General standards.* The following standards shall apply to each townsite designated by the Secretary:

(1) Use and development of the property will be in conformance with applicable Federal, State, and local laws, regulations and ordinances.

(2) There will be adequate provision for disposal of solid and liquid waste originating on or resulting from use of the property.

(3) All new utilities will be underground, unless waived by the Secretary.

(4) Roads will be designed, located, and constructed to minimize esthetic impact and soil movement.

(5) No structures or other improvements will be constructed within 150 feet of the exterior boundaries of the townsite adjacent to National Forest System lands except as may be necessary to construct, operate and maintain utilities, roads, trails, and similar facilities or improvements. Removal of live trees and other vegetation is limited to that necessary to accommodate installation of the improvements.

§ 254.28 Delegation of authority.

The Chief or Acting Chief, Forest Service, is authorized to prescribe such supplemental procedures and conditions or delegate such functions or authority as may be necessary or desirable to carry out the provisions of this subpart.

[FR Doc. 78-3608 Filed 2-9-78; 8:45 am]

[4110-35]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart T—Health Maintenance Organizations

REIMBURSEMENT OF REINSURANCE COSTS FOR RISK-BASIS HEALTH MAINTENANCE ORGANIZATIONS

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulation.

SUMMARY: The regulation provides for the Department to share in the cost of reinsurance for basic health services provided under title XVIII (Medicare) by certain Health Maintenance Organizations (HMOs) when the aggregate cost of providing those services to an HMO member exceeds \$5,000 in any contract period.

The regulation implements section 201(c) of Pub. L. 94-460, the Health Maintenance Organization Amendments of 1976.

For risk-basis HMOs (i.e., those reimbursed on an incentive basis), but not for those reimbursed on a reasonable cost basis, the regulation broadens the Medicare reimbursement policy and makes it more consistent with reinsurance policies under title XIII of the Public Health Service Act (42 U.S.C. 300e(c)(2)(A)). See also 42 CFR 110.108(b)(1).

EFFECTIVE DATE: This amendment shall be effective February 10, 1978.

ADDRESSES: Although the amendment is being published as a final regulation and is effective immediately, consideration will be given to any data, views, or arguments pertaining to the amendment which are submitted in writing to the Administrator, Health Care Financing Administration, Department of Health, Education and Welfare, P.O. Box 2372, Washington, D.C. 20013. Please refer to MAB-28-RC. Agencies and organizations are requested to submit their comments in duplicate. Copies of all comments received in response to this amendment will be available for public inspection, beginning approximately 2 weeks after publication, Monday through Friday of each week from 8:30 a.m. to 5 p.m. in Room 5225 of the Department of Health, Education and Welfare, D.C. 20201, telephone 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

Mr. Marinos Svolos, Medicare Bureau, 301-594-9314.

SUPPLEMENTARY INFORMATION: Section 201(c) of Pub. L. 94-460

amended section 1876(i)(6)(B) of the Social Security Act (42 U.S.C. 1395mm(i)(6)(B)), to authorize the health insurance program under title XVIII of the Act to include in allowable reinsurance costs for risk-basis HMO's, "the cost of providing any member with basic health services the aggregate value of which exceeds \$5,000 in any year." This amendment, which applies to contracts between the Secretary and a risk-basis HMO for contract periods beginning on or after December 1, 1976, recognizes the cost of reinsurance for catastrophic illness, a type of reinsurance frequently used by HMO's. This amendment does not apply to HMO's reimbursed on a reasonable-cost basis in accordance with section 1876(a)(3)(B) of the Social Security Act.

Prior to the HMO Amendments of 1976, section 1876(i)(6)(B) of the Social Security Act limited payment of reinsurance costs by the Medicare program to out-of-area covered services. Section 201(c) of Pub. L. 94-460 authorizes the Medicare program to also reimburse its share of the cost of reinsurance for covered services provided to an enrollee in a risk-basis HMO, the aggregate value of which exceeds \$5,000 during a contract period.

This amendment is being issued as a final regulation without a notice of proposed rulemaking for several reasons. First, the statute is quite specific as to the type and extent of reinsurance costs that are allowable. The amendment merely conforms the regulations to the amended statute, which applies to contract periods beginning on or after December 1, 1976. In addition, implementation of this amendment to the regulations will mean a less restrictive policy for risk-basis HMO's that purchase reinsurance for catastrophic coverage since the health insurance program under title XVIII of the Social Security Act will reimburse its share of such reinsurance costs. Accordingly, notice and public procedure on the notice would be unnecessary and contrary to the public interest. A delay in the effective date of this amendment is, therefore, also being dispensed with.

(Secs. 1102, 1871, 1876, Social Security Act, 49 Stat. 647, as amended, 79 Stat. 331, and 86 Stat. 1396 (42 U.S.C. 1302, 1395hh, 1395mm).)

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, health insurance for the Aged—Supplementary Medical Insurance.)

NOTE.—The Health Care Financing Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: August 10, 1977.

ROBERT A. DERZON,
Administrator, Health Care
Financing Administration.

Approved: February 2, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary.

42 CFR 405.2050 is amended by deleting the word "and" at the end of paragraph (b)(1)(ii), revising paragraph (b)(1)(iii), and adding paragraph (b)(1)(iv) to read as follows:

§ 405.2050 Determining adjusted incurred cost.

(b) *Reinsurance.* (1) The health insurance program's share of the reasonable cost for reinsurance (i.e., protection against all or part of the financial risk that the HMO is obligated to assume under its subscriber agreement with enrollees who are title XVIII beneficiaries) is allowable to the extent that the HMO incurs reinsurance costs for:

- (i) ***
- (ii) ***
- (iii) Covered items and services, other than those described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, furnished outside the HMO's enrollment area through arrangements (§ 405.2005(a)(2)), and
- (iv) Effective with contract periods beginning on or after December 1, 1976, covered items and services with allowable costs as determined under this subpart, the aggregate value of which exceeds \$5,000 provided to an HMO enrollee in any contract period.

[FR Doc. 78-3694 Filed 2-9-78; 8:45 am]

[4110-35]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

PART 449—SERVICES AND PAYMENTS IN MEDICAL ASSISTANCE PROGRAMS

Health Maintenance Organizations and State Medicaid Contracts

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Rules with Comment Period.

SUMMARY: These amendments to current regulations (1) revise qualification and related grievance requirements that must be met if an organization is to participate as a health maintenance organization (HMO) under the Medicare program and (2) revise requirements for contracts between State agencies and health care contractors (including HMOs) who provide care to recipients under the Medicaid program.

The Medicare amendments are required by section 201 of Pub. L. 94-460 (the Health Maintenance Organization Amendments of 1976). Section 201 modified the Medicare definition of an HMO to make it more consistent with the HMO definition under Title XIII of the Public Health Service (PHS) Act. The Medicaid amendments incorporate section 202 of Pub. L. 94-460, as amended by section 105(a) of Pub. L. 95-83, which defines HMO for Medicaid purposes and prescribes certain requirements.

The intent of the amended regulations is to create more uniformity in HMO policy and administration.

EFFECTIVE: These regulations are effective February 10, 1978. However, comments received by April 11, 1978, will be considered.

ADDRESSES: Address written comments to: Administrator, Health Care Financing Administration, U.S. Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. When commenting, please refer to MAB-25 (Medicare) or MMB-224-RC (Medicaid). Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection, beginning 2 weeks after publication, in Room 5225 of the Department's offices at 330 C Street SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m.; telephone: 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

For Medicare regulations: Marinos Svolos, 301-594-9315. For Medicaid regulations: Emily J. Nichols, 202-245-0701.

SUPPLEMENTARY INFORMATION:

BACKGROUND

To the extent permitted by the law, these Medicare and Medicaid regulations impose consistent requirements for HMOs. The basic differences between the Medicare (title XVIII of the Social Security Act) and Medicaid (title XIX of the Act) statutory provisions are:

1. *Payment of HMOs on Cost Basis.* Pub. L. 94-460 rules out cost basis HMOs under title XIX. Entities which operate on a cost basis are, therefore, referred to as "prepaid health plans." Title XVIII however, specifically provides for payment of HMOs on a cost basis (as well as on a risk basis).

2. *Membership.* Title XVIII provides that at least half of the enrolled membership of the HMO must be individuals under age 65. On the other hand, title XIX provides that less than 50 percent of the membership must be Medicare beneficiaries or Medicaid re-

ciipients. Both statutes provide a 3-year period in which to achieve these membership standards, and both provide that the waiver (in title XVIII) and the grace period (in title XIX) are contingent upon the HMO's demonstration, to the satisfaction of the Secretary, that it is making effort and progress toward achieving these standards.

3. *Open enrollment.* Pub. L. 94-460, by cross-reference to section 1301(c) of the Public Health Service (PHS) Act, requires HMOs under title XIX to have the same open-enrollment requirement as HMOs qualifying under title XIII of the PHS Act. Section 1301(c) of the PHS Act limits application of the open-enrollment provision to HMOs that (a) have not incurred a financial deficit in the previous fiscal year and (b) either have been in existence for at least 5 years or have a minimum of 50,000 members. The law also permits a suspension of the normal 30-day open enrollment period as soon as the HMO has successfully enrolled a certain minimum of new members. This requirement may also be waived by the Secretary if it would jeopardize the HMO's financial stability.

The substance of the Medicare open-enrollment provision was not changed by Pub. L. 94-460. The Medicare requirement provides that an organization, regardless of experience or size of membership, that wishes to participate as an HMO under Medicare must have an open enrollment period at least once a year. During this period, it must accept eligible Medicare beneficiaries, up to the limits of its capacity, in the order in which they apply for membership. The Secretary, however, may waive this requirement if it would result in the HMO having a membership in which over 50 percent are Medicare beneficiaries or Medicaid recipients or in certain other situations described in the regulations.

Pub. L. 94-460 provides that a title XVIII HMO shall have an enrolled membership at least half of which consists of individuals who have not attained age 65 and provides that the open enrollment of Medicare beneficiaries does not apply where additional enrollment would result in a failure to meet this 50-percent requirement. The existing regulatory provision which permits a waiver of open enrollment when the added enrollment would result in over 50-percent Medicare/Medicaid enrollees in the entity is not changed in the regulations. This provision is retained for purposes of achieving maximum conformity with the policies of the Public Health Services Act regulations and the Medicaid regulations which have 50-percent Medicare/Medicaid requirement. The provision is supportable by the language in section 1876(k), as added by Pub. L.

94-460, which authorizes restrictions in open enrollment "as may be authorized in regulations."

It is important to emphasize, however, that a qualified organization that wishes to participate under the Medicare program only, and not under title XIII of the PHS Act, does not have to meet an open enrollment requirement for its non-Medicare members.

CHANGES UNDER THE MEDICARE PROGRAM

The existing qualifying conditions for HMO and related grievance procedure requirements under the Medicare program were published in the FEDERAL REGISTER on July 2, 1975 (40 FR 28016) and March 4, 1976 (41 FR 9307), respectively. Section 1876 of the Social Security Act (42 U.S.C. 1395mm), the statutory basis for these regulations, was amended by Pub. L. 94-460 on October 8, 1976.

Pub. L. 94-460 made the PHS Act provisions dealing with the organization and operation of HMOs applicable to HMOs under Medicare, with certain exceptions. The PHS provisions require that:

(1) Health services be available and accessible to each HMO member 24 hours a day, 7 days a week;

(2) The HMO have a fiscally sound operation, including an approach which safeguards against the risk of insolvency; and

(3) A minimum of one-third of the HMO's governing body be enrolled members who have no ownership or financial interest in the HMO.

The title XVIII statutory requirements concerning HMOs retained by Pub. L. 94-460 either as exceptions to the requirements of the PHS Act or as additional requirements are:

(1) The HMO must provide its enrollees with the services and benefits included under Parts A and B of title XVIII, rather than the basic health services required under title XIII of the PHS Act;

(2) Services and benefits must be provided through institutions, entities, and persons that meet applicable requirements of section 1861 of the Social Security Act;

(3) At least half of the HMO's membership must be individuals under age 65;

(4) The HMO must enroll Medicare beneficiaries on a first come, first-served basis, up to the limits of its capacity and without restrictions (except as authorized in the regulations); and

(5) The HMO must meet certain minimum enrollment size and operating experience standards to qualify as a risk-basis.

Pub. L. 94-460 also provides for the Secretary to delegate to the Assistant Secretary for Health the responsibility for determining whether an organization qualifies as an HMO under Medi-

care. An organization that has been determined qualified must enter into a contract with the Secretary in order to participate and receive payment as an HMO under title XVIII. (Proposed regulations on the contract provisions were published in the FEDERAL REGISTER on December 22, 1976.) These rules will soon be published as final regulations.

The major effect of Pub. L. 94-460 upon title XVIII was to make the Medicare program's definition of an HMO more consistent with the HMO definition under title XIII of the PHS Act. While the Medicare definition of an HMO was more closely aligned with the PHS definition, the Medicare law does not require an organization to be eligible to participate under the PHS Act in order to be eligible to participate under Medicare. Therefore, a qualified organization that wishes to participate as an HMO under only the Medicare program and not under the other Federal HMO programs is permitted to do so under these regulations. The new Medicare definition is effective for all title XVIII contracts entered into on or after December 1, 1976.

AMENDMENTS TO REGULATIONS

Below is a summary of the amendments made to Medicare regulations under 42 CFR Part 405:

OVERALL CHANGES

The major changes made in the Medicare regulations deal with organizational and structural qualification requirements rather than requirements on types of title XVIII HMOs, membership, and minimum range of services, etc. These changes apply to the HMO itself as well as to certain types of entities with which a qualified HMO may make arrangements to furnish services to its enrollees. For the most part, these amendments revoke or substantially modify a number existing title XVIII qualification and grievance procedure requirements and incorporate, by cross-reference, the applicable PHS regulations. Other editorial changes have been made to reorganize or clarify existing requirements that are not significantly affected by Pub. L. 94-460.

ADDED QUALIFICATION REQUIREMENTS FOR MEDICARE HMOs

In linking the requirements HMOs must meet under title XVIII of the Social Security Act with the requirements for HMOs under title XIII of the PHS Act, Pub. L. 94-460 added a number of requirements to Medicare's HMO qualifying conditions that now apply to HMOs under title XIII. Interim regulations reflecting the amendments to the PHS Act made by Pub. L. 94-460 were published in the FEDERAL

REGISTER on June 8, 1977 (42 FR 29400). The revised Medicare regulations incorporate by cross-reference to these PHS interim regulations, the definitions of "medical group" and "Individual Practice Association (IPA)". The substantive element of the "medical group" definition includes: (a) Pooling of income from the physician member's group practice, and distribution of the income in some manner which is unrelated to the provision of specific services; (b) shared use of records and equipment; (c) continuing education of its members; and (d) the requirements that each physician member devote at least 50 percent of his or her time to group patients and that the group as a whole devote at least 35 percent of its time to the HMO enrollees. The PHS interim regulations also place definite limits on the extent to which care may be furnished by the HMO through entities other than medical groups and IPA's.

The Medicare regulations are amended to require that: (a) A minimum of one-third of the HMO's governing body be composed of enrolled members of the HMO who have no ownership or financial interest in the HMO; (b) no more than 75 percent of the organization's members be drawn from any medically underserved area unless such area is also a rural area as defined in the regulations; and (c) the HMO furnish health education services and medical social services to its members. (The furnishing of these services is solely a qualification requirement mandated by Pub. L. 94-460; the amendments to title XVIII did not change Medicare's coverage to include these items where they are not now covered.)

The Department intends to issue shortly a Notice of Proposed Rulemaking revising the interim PHS regulation requirements which have been incorporated into these regulations by cross-references. Therefore, as changes are made in the PHS regulations, corresponding changes will be reflected in the Medicare regulations.

REVOCATION OR MODIFICATION OF QUALIFICATION AND RELATED REQUIREMENTS

The revised Medicare regulations also revoke or otherwise modify certain existing qualifying conditions and related grievance procedure requirements to conform them to requirements of the PHS Act and related regulations:

1. Section 405.2003 is revoked in its entirety and replaced by a new § 405.2003 that addresses the HMO requirements under the PHS Act which were incorporated into Medicare's HMO definition.

2. Section 405.2006 on effective arrangements, § 405.2009 on access to services, § 405.2010 on grievance proce-

dures, § 405.2011 on ongoing program review of services provided, and § 405.2012 on financial responsibility are revoked in deference to the PHS Act requirements on these matters.

3. Portions of § 405.2007 on physician staffing and supervision and § 405.2008 on assurance of quality of care have been consolidated into a new § 405.2007 on provision of services to reflect Pub. L. 94-460 and to better organize requirements that relate to one another.

4. As a result of the revocation of § 405.2010 on grievance procedures, § 405.2057 has been revoked, and other minor conforming changes have been made elsewhere in the regulations.

UNCHANGED REQUIREMENTS

As noted above, a number of requirements under title XVIII were retained by Pub. L. 94-460 as exceptions to PHS requirements or as additional requirements. Therefore, related requirements in existing regulations have not been changed. All of these provisions are authorized by section 1876 of the Social Security Act.

GOOD CAUSE TO DISPENSE WITH NOTICE AND COMMENT

There is a need to issue these amended Medicare regulations so that organizations can qualify as HMO's under the amended title XVIII. Also, under the amended regulations, organizations that are interested in qualifying as HMO's under title XVIII of the Social Security Act and title XIII of the PHS act will benefit substantially from the uniform qualification requirements. Therefore, the Department has determined that public participation in rulemaking prior to issuance of these regulations, and a delay in their effective date, would be contrary to the public interest, and, accordingly, that good cause exists for making these regulations effective immediately.

CHANGES UNDER MEDICAID PROGRAM

BACKGROUND

The existing regulations for contracts under the Medicaid program (42 CFR 499.82, previously 45 CFR 249.82) were published in the FEDERAL REGISTER (40 FR 20517) on May 9, 1975. They set forth requirements for State agencies contracting with fiscal agents, health care project grant centers, and providers reimbursed on a prepaid capitation basis (including HMO's) for the provision of or payment for medical services under title XIX of the Social Security Act. The amendments to section 1903 of the Social Security Act made by Pub. L. 94-460 require a change in Medicaid regulations. The statute now contains a definition of an HMO in section 1903(m)(1)(A) that differs from the

definition in the existing regulations, and places certain limits on title XIX funding of organizations operating on a "risk" basis.

The revised Medicaid regulations incorporate the definition of an HMO as prescribed by Pub. L. 94-460 for Medicaid, and list the "basic health services" which must be provided to eligible title XIX enrolled recipients. Also since Pub. L. 94-460 prohibits Federal financial participation (FFP) in State payments to certain entities which provide specified services on a risk basis unless an entity has been determined to be an HMO, the regulations clarify the differences between risk contracts and contracts with prepaid health plans and set forth the requirements for each.

STATUTORY AND REGULATORY AMENDMENTS

Pub. L. 94-460 defines the term "Health Maintenance Organization," for Medicaid purposes, as applying only to entities which have been determined to meet the definition in section 1903(m)(1)(A) of the Social Security Act. They may operate only on a risk basis. These regulations incorporate the specific requirements of the law that Federal title XIX matching funds are not available for State payments to certain entities which operate on a prepaid capitation risk basis, or any other risk basis, unless the entity has been determined to be an HMO by the Secretary, or has been provisionally determined to be an HMO by a State. This exclusion from FFP, however, does not apply to entities which meet the criteria contained in sections 1903(m)(2)(B) (i), (ii), or (iii) of the Social Security Act. These sections provide for "grandfathering" certain organizations funded under Public Health Service grant programs or the Appalachian Regional Development Act, and certain organizations in operation before 1970. These organizations, since they are exempted from the requirement for HMO determination, will only be termed HMO's if they have requested and been determined to meet the definition. Otherwise, they are included in the group of organizations which are not HMO's and which are referred to as "Prepaid Health Plans."

An additional condition under Pub. L. 94-460 for the use of title XIX funds in payments to HMO's is that less than 50 percent of the enrolled members of the qualified HMO must be individuals receiving benefits under title XVIII of the Social Security Act, or individuals receiving assistance under title XIX. This requirement does not apply, however, for a period of 3 years from the date an HMO enters into a contract with a State agency or October 8, 1979 (whichever is later), if the HMO demonstrates to

the satisfaction of the Secretary that it is making continuous efforts and progress toward achieving compliance with this requirement. The HMO must submit a plan detailing its effort and progress during each of the 3 years.

With respect to prepaid health plans, the 50 percent membership requirement in the existing regulations is being carried forward in a modified version. The time-frame for achieving the 50 percent membership standard has been extended to 3 years so that it is consistent with the requirements of Pub. L. 94-460. The waiver of the requirement for good cause is not limited to 3 years. The Department believes the "good cause" waiver is in accord with the intent of Congress that quality medical care be available to all persons.

In addition to incorporating the provisions of Pub. L. 94-460, the regulation also retains the existing contract requirements applicable to all types of contracts, since the Department considers these essential to effective arrangements for services to recipients.

In summary, the changes in the Medicaid regulations published today result in: A revised § 449.82 applying to contracts with fiscal agents, health care project grant centers, and providers (including HMO's) reimbursed on a prepaid capitation or other basis; and incorporation of the prohibition of FFP for entities covered by § 1903(m)(2)(A) of the Social Security Act not determined to be HMO's.

The revision incorporates the definitions and requirements which became effective by virtue of the statute. These revised Medicaid regulations, are therefore, effective upon publication in the FEDERAL REGISTER.

GOOD CAUSE TO DISPENSE WITH NOTICE AND COMMENT

No substantive changes in existing regulatory requirements other than those enacted by Pub. L. 94-460 and the modification of the 50/50 membership requirements for prepaid health plans reimbursed on a non-risk basis, as discussed above, have been implemented by the Medicaid regulations. The basic result of these regulations is to conform the existing regulations to the statute. Accordingly, the Secretary finds that it is in the public interest and there is good cause to dispense with proposed rulemaking prior to issuance of the regulation.

Although only changes related to the statutory amendments are being made at this time, the Department also has underway a review of the overall regulations for all types of Medicaid contracts and expects to publish shortly a Notice of Proposed Rulemaking containing substantive changes. These will relate to such items as competitive bidding, duration of contracts, extent of subcontracting,

prior HEW approval, etc. The Notice will solicit comments on these and other provisions from all interested persons.

PUBLIC COMMENT

Although Notice of Proposed Rulemaking has been dispensed with for both the Medicare and Medicaid regulations for the stated reasons, consideration will be given (for future changes) to any comments, suggestions, or objections which are submitted to the Administrator, Health Care Financing Administration by April 11, 1978.

Part 405 of Chapter IV of Title 42 of the Code of Federal Regulations is amended as set forth below:

1. Section 405.2001 is amended by revising paragraph (a) and the material in (b) preceding (b)(1) to read as follows and by revoking paragraph (b)(5):

§ 405.2001 Health maintenance organizations; general.

(a) *Introduction.* The regulations in this Subpart T set forth the requirements which an organization must meet in order to be eligible to enter into a contract with the Secretary as a health maintenance organization (HMO) under the health insurance program for the aged and disabled (title XVIII of the Social Security Act) and to be reimbursed through capitation payments for covered items or services the organization furnishes title XVIII beneficiaries who have enrolled with it.

(1) *HMO Amendments of 1976.* The requirements described in this subpart reflect the provisions of section 201 of Pub. L. 94-460 (the HMO Amendments of 1976) which amended section 1876 of the Social Security Act, to align the title XVIII definition of an HMO more closely with the definition of an HMO under title XIII of the Public Health Service (PHS) Act. The 1976 amendments, however, preserved a number of statutory requirements which apply to any organization which wishes to participate as an HMO under title XVIII. These regulations include the PHS requirements that apply to an HMO under title XVIII. They are specified in § 405.2003. The requirements which are unique to title XVIII are described in § 405.2001(b), § 405.2004, § 405.2005, and § 405.2007, and include those dealing with types of HMO's, HMO membership (including an open-enrollment provision which is different from that applied under the PHS Act), range of services, method of reimbursement, and other requirements as specified.

(2) *General definition of a title XVIII HMO.* For title XVIII purposes, an HMO is defined as a legal entity which, except as provided by section 1876(b)(1) of the Social Security Act, provides health services on a prepay-

ment basis to its enrolled members in a manner prescribed by section 1301(b) of the PHS Act (42 U.S.C. 300e), and is organized and operated in a manner prescribed by section 1301(c) of the PHS Act, and meets all other applicable requirements of section 1876 and this subpart.

(3) *Contract with the Secretary.* In order to participate and receive payment as an HMO under title XVIII, an organization must enter into a contract with the Secretary as an HMO. The requirements pertaining to the Secretary's contract with an HMO are described in § 405.2028 through § 405.2035.

(b) *Types of title XVIII health maintenance organizations.* HMO's may be distinguished according to their level of development or method of Medicare (title XVIII) reimbursement.

(5) [Reserved]

2. Section 405.2002 is revised to read as follows:

§ 405.2002 Qualifying conditions: General.

An HMO which wishes to contract with the Secretary pursuant to section 1876 of the Act must be able to demonstrate its ability to provide to its enrollees who are title XVIII beneficiaries, a specified range of comprehensive services efficiently, effectively, and economically. An assessment of an organization's ability to meet the definitional requirements of an HMO under title XVIII of the Act as defined in section 1876 is necessarily based on the organization's ability to enroll members and deliver high quality health services. The qualifying conditions specified in §§ 405.2003 through 405.2005 and § 405.2007 are designed to assure the Secretary or his delegate of the HMO's ability to fulfill these requirements as provided by section 1876 of the Act. Generally, each qualifying condition is interpreted by a series of standards. Reference to these standards is made by the Secretary when surveying an HMO to document its activities, to establish the nature and extent of its deficiencies, if any, and if the Secretary enters into a contract with the HMO, to assess the HMO's need for improvement in relation to the prescribed qualifying conditions. The application of the standard indicates the extent and degree to which an applicant organization is complying with each condition. To qualify as an HMO under title XVIII of the Act, a mature HMO must be in compliance with all of the qualifying conditions and applicable standards set forth in §§ 405.2003 through 405.2005 and § 405.2007. A developing HMO in order to qualify as an HMO under title XVIII of the Act must be in compliance with all of the qualifying condi-

tions and standards set forth in §§ 405.2003 through 405.2005 and § 405.2007 except for the standards specified in §§ 405.2004(a) and 405.2005(a), and must demonstrate that it is making reasonable efforts, as described in § 405.2001(b)(2), to meet fully the standards in §§ 405.2004(a) and 405.2005(a).

3. Section 405.2003 is revised to read as follows:

§ 405.2003 Qualifying conditions: Public Health Service Act requirements.

An HMO must demonstrate that, except as provided by section 1876(b)(1) of the Social Security Act, it meets the applicable requirements of section 1301(b) and section 1301(c) of the PHS Act and applicable regulations (see 42 CFR Part 110 on Health Maintenance Organizations). In complying with this condition, an HMO must meet the PHS regulatory requirements in 42 CFR 110.101 (i) or (j); 110.104(a) (1), (2), and (3); 110.105(a) (1) and (2); 110.106(a); 110.107; 110.108 (a) and (c); and 110.108 (f) through (r).

4. The designation "V" is deleted in § 405.2004(c)(2) and § 405.2004(c)(3) is revoked and reserved.

§ 405.2004 Qualifying condition: Membership.

(c) * * *

5. Paragraphs (a) (1) and (2) of § 405.2005 are revised to read as follows:

§ 405.2005 Qualifying condition: Range of services.

(a) * * *

(1) (i) The mature HMO must provide to its enrollees who are title XVIII beneficiaries, directly or through arrangements with others (see 42 CFR 110.104), basic health services which, for purposes of this subpart, means all of the items and services covered under the health insurance program (see Subparts A and B of this part) which are available to individuals who are not enrolled in the HMO (non-enrollees) residing in the HMO's service area. (See 42 CFR 110.101(d).) In its service area, the organization must offer its full range of covered title XVIII items or services to its enrollees who are title XVIII beneficiaries. The HMO's service area is different from an HMO's enrollment area (i.e., the geographic area encompassing the permanent residences of its enrollees) which may include locations outside the organization's service area where it offers less than its full

range of covered title XVIII items or services.

(ii) The Secretary shall determine whether a service is available to individuals residing in an HMO's service area on the basis of all relevant facts, including:

(a) Whether part or all of the HMO's service area has been designated as a medically underserved area; or

(b) Whether the Secretary has otherwise determined that there is in the service area a scarcity of covered items and services or qualified personnel to provide them.

(iii) A "medically underserved area" for purposes of this subpart is an urban or nonurban geographic area designated by the Secretary as an area with a shortage of one or more basic types of health services, e.g., physicians' services and inpatient hospital services. (Designations with respect to such urban or nonurban areas are made by the Secretary as described in 42 CFR 110.203(g).)

(2) Even though a particular item or service covered under the health insurance program is not available from physicians, suppliers, or providers of services which are located in the HMO's service area, the organization must be responsible for arranging and paying for those covered items or services if patients in its service area (other than enrollees of the organization) are commonly referred for those services, when needed, to sources outside the area.

§ 405.2006 [Reserved]

6. Section 405.2006 is revoked and reserved.

7. Section 405.2007 is revised to read as follows:

§ 405.2007 Qualifying condition: Provision of services.

An HMO must provide the services and benefits required in § 405.2005 to its enrollees who are insured for benefits under the hospital insurance and supplementary medical insurance programs of title XVIII, or for benefits under the supplementary medical insurance program alone, through institutions, entities, and persons meeting the applicable requirements of section 1861 of the Social Security Act, as amended (42 U.S.C. 1395x).

(a) *Standard: Conformance with title XVIII conditions of participation and conditions for coverage.* If title XVIII covered items or services are provided by a hospital, skilled nursing facility, home health agency, or a provider of outpatient physical therapy or speech pathology services, such provider of services must meet the applicable conditions of participation as described in Subparts J, K, L, and Q of this part. Similarly, if services are pro-

vided by independent laboratories or portable X-ray suppliers, or suppliers of end-stage renal disease or kidney transplantation services, those laboratories or suppliers must meet the applicable conditions for coverage, as set forth in Subparts M, N, and U of this part.

(b) *Standard: Physician supervision.* The HMO's health delivery system must provide for supervision by a physician as prescribed in section 1861 of the Social Security Act (42 U.S.C. 1395x) of other health care professionals who are directly involved in the provision of health care.

(1) In the case of services furnished by the HMO's clinics (or its arranged-for physician offices), the HMO must demonstrate to the satisfaction of the Secretary or his delegate that:

(i) services by other health care professionals are under the direct supervision of a physician, and

(ii) a physician (or physicians) is present to perform medical (rather than administrative) services at all times that the HMO's clinics (or its arranged-for physician offices) are open, and

(iii) each patient is under the care of an HMO physician (or HMO arranged-for physician).

(2) For purposes of this subpart, the term "other health care professionals" refers to those paramedical, ancillary, and other nonphysician personnel who are engaged in the delivery of health services.

§§ 405.2008, 405.2009, 405.2010, 405.2011 and 405.2012 [Reserved]

8. Sections 405.2008 through 405.2012 are revoked and reserved.

§ 405.2025 [Amended]

9. Section 405.2025(a)(1) is amended by deleting the reference to "§ 405.2057" after "pursuant to" and adding in place of that reference the phrase "section 1301(c)(7) of the Public Health Service Act".

10. Paragraphs (b), (c), and (d) of § 405.2056 are revised to read as follows:

§ 405.2056 Beneficiary appeals.

(b) *General.* (1) Sections 405.2056-405.2063 establish procedures for the presentation and resolution of initial determinations, reconsiderations, hearings, Appeals Council reviews, court reviews, and finality of decisions which are applicable only in matters arising under section 1876 of the Social Security Act, as amended. The grievance procedures established under section 1301(c) of the Public Health Service Act (42 FR 29400) apply to all complaints that do not involve initial determinations.

(2) The appeals procedure pertains to disputes involving:

(i) Initial determinations (see § 405.2058) with which the enrollee is dissatisfied (i.e., the enrollee has received items or services for which he is held liable by the HMO); or

(ii) Requests for services which may be paid for under title XVIII of the Act and which the HMO has refused to provide or arrange for and which have not been provided elsewhere.

(3) Any determinations regarding items or services which were furnished by the HMO, either directly or through arrangement, for which the enrollee is not liable are, therefore, not subject to appeal. Services excluded from coverage under title XVIII of the Act and recognized as such in the contract between the HMO and the enrollee by their inclusion in a supplemental plan (see § 405.2022(a)) or otherwise, are subject only to a grievance procedure. (See section 1301(c) of the Public Health Service Act.) Physicians and other individuals who are furnishing items or services under arrangements with an HMO have no right of appeal under this subpart. The provisions of Subpart J of 20 CFR Part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided in this subpart, also applicable to matters arising under section 1876 of the Act.

(c) *Responsibility for establishing appeal procedures.* (1) The provisions of this subpart apply equally to all beneficiaries under title XVIII of the Act who are enrollees in an HMO, regardless of the method of claims processing adopted by the particular HMO. The HMO is responsible for establishing and maintaining the appeals procedures which are specified within this subpart.

(2) If, however, a carrier or intermediary processes the claims for the HMO's enrollees, that carrier or intermediary:

(i) Is acting in the place of the HMO (except with regard to initial determinations as specified in § 405.2058(a)(4)); and

(ii) Conducts the appeals procedures specified in this subpart, except that § 405.2059(h)(1)(ii) shall not apply to that carrier or intermediary.

(d) *Written description of appeals procedure.* It is the responsibility of each HMO to ensure that all enrollees who are beneficiaries under title XVIII of the Act are informed in writing of the appeals procedures which are available to them.

§ 405.2057 [Reserved]

11. Section 405.2057 is revoked and reserved.

42 CFR 449.82 is revised to read as set forth below:

§ 449.82 Contracts with fiscal agents, health care project grant centers, health maintenance organizations, and providers reimbursed on a prepaid capitation basis (prepaid health plans).

(a) *Purpose.* This section sets forth the requirements for certain State contracts for the provision of or payment for medical and remedial services under title XIX of the Social Security Act.

(b) *Definitions.* (1) "Contractor" means a health insuring organization, a health maintenance organization or other medical provider reimbursed on a prepaid capitation basis, for medical services to enrolled recipients, a private nonmedical institution, a health care project grant center, or a fiscal agent which contracts with the single State agency, under the terms of this section, to pay for or provide medical services under a State medical assistance plan, in consideration of a payment.

(2) "Health insuring organization" means an organization legally operating within the State which pays for the cost of medical services available under the State plan to eligible recipients in exchange for a premium or subscription charge paid by the State agency, and which assumes an underwriting risk. A "Health insuring organization" includes a health maintenance organization or other medical provider which is reimbursed on a prepaid capitation basis if an underwriting risk is assumed by the contractor under the contract.

(3) "Fiscal agent" means a contractor which processes or pays vendor claims on behalf of the single State agency.

(4) "Private nonmedical institution" means a facility such as a child-care institution or a maternity home, whose regular business is not that of a prepaid health insuring organization, or community health care center, but which provides medical care through contracts or other arrangements with medical providers, and which receives payments on a prepaid capitation basis through contract with the single State agency. No assumption of underwriting risk is borne by the institution.

(5) "Health care project grant center" means an organization supported in whole or in part by Federal project grant financial assistance which provides or arranges for medical services to an enrolled population and receives payment for services to eligible recipients through contract with the single State agency.

(6) "Prepaid health plan" means a health care provider which is not a health maintenance organization, and which provides medical services to enrolled recipients under contract with the State medical assistance agency on a prepaid capitation basis. This includes the entities which meet the cri-

teria contained in section 1903(m)(2)(B) (i), (ii) or (iii) of the Social Security Act.

(7) "Health maintenance organization" (HMO) means a legal entity determined by the Assistant Secretary of Health (Public Health Service) to meet the definition contained in section 1903(m)(1)(A) of the Social Security Act. (The definition contained in that section provides that an entity is an HMO if it satisfies the following three conditions: (i) The entity provides to its Medicaid eligible enrollees the following services: inpatient hospital and outpatient hospital services, laboratory and X-ray services, family planning services and supplies, physicians' services, and to the extent provided for under a State's Medicaid plan, home health care services. These listed services shall be the "basic health services" for purposes of making determinations under sections 1301(b) and 1301(c) of the Public Health Service Act. (ii) The entity provides those services and benefits in a manner prescribed in section 1301(b) of the Public Health Service Act. (iii) The entity is organized and operated in the manner prescribed by section 1301(c) of the Public Health Service Act.)

(8) "Provisional HMO" means a legal entity for which a State has made a provisional determination that such entity is an HMO as defined in section 1903(m)(1)(A) of the Social Security Act. Such determination may be made only after 90 days have expired from the time the HMO applied to the Public Health Service, and when no determination of whether the entity meets the definition in section 1903(m)(1)(A) of the Social Security Act has been made.

(9) "Premium or subscription charge" means the per capita amount paid by the single State agency to a contractor for each eligible recipient enrolled under a contract for the provision of medical and remedial care and services under the State plan, whether or not they receive such medical or remedial care and services during the contract period.

(10) "Enrolled recipient" means an eligible recipient who has entered into an agreement to receive services from a medical provider reimbursed under the terms of a prepaid capitation contract with the State title XIX agency under the provisions of paragraphs (c) (5) and (6) of this section.

(11) "Risk" or "underwriting risk" means a significant risk of loss assumed by the contractor which receives the premium or subscription charge under a contract with the single State agency for providing medical services to enrolled recipients. Such risk arises because the contractor's cost of providing services may exceed the premiums, subscription

charges or capitation fees it has received under the contract with the State agency during the contract period.

(c) *State plan requirements for contracts under this section.*—(1) *All contractors.* A State plan under title XIX of the Social Security Act which provides part or all of its medical assistance, or provides for processing or paying vendor claims for medical assistance, through arrangements with contractors must provide that the contract shall be in writing and will:

(i) Specify the contract period;
(ii) Specify the functions of the contractor;
(iii) Identify the population to be covered by the contract and specify any necessary procedures for their enrollment or reenrollment;

(iv) Specify the amount, duration and scope of medical assistance to be provided or paid for;

(v) Provide that the single State agency and the Department shall have the right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under such contract, and to audit and inspect any books and records of such contractor which pertain to services performed and determination of amounts payable under such contract;

(vi) Establish provisions and criteria for extension, renegotiation and termination of the contract. Termination procedures must include provisions requiring the contractor to supply promptly all information necessary for the reimbursement of any outstanding claims of enrolled participants;

(vii) Provide that the contractor shall establish and maintain an appropriate record system for services rendered title XIX enrollees and that these records shall be preserved for the period of time specified by the Secretary.

(viii) Provide that the contractor shall conform to the requirements of 45 CFR 205.50 regarding confidentiality of information about eligible recipients;

(ix) Specify how the requirements of § 450.31 of this chapter with respect to third party liability will be carried out by the contractor and by the State agency; and

(x) Specify which functions undertaken by the contractor may be carried out under subcontracts and that all such subcontracts shall be in writing and fulfill the provisions of this section which are appropriate to the service or activity delegated under the subcontract. No subcontract can terminate the legal responsibility of the contractor to the State agency to assure that all the activities under the contract will be carried out.

(2) *Health insuring organizations.* In addition to the requirements specified in paragraph (c)(1) of this section,

a State plan which provides for contracts with health insuring organizations (including contracts with health maintenance organizations and other medical providers reimbursed on a prepaid capitation basis which have assumed an underwriting risk under the contract) must also provide that such contracts will:

(i) Provide that the premium or subscription charge must be reasonable, and may not exceed the amount set forth in § 450.30 of this chapter;

(ii) Provide that the premiums or subscription charges paid on behalf of each enrolled recipient shall not be subject to renegotiation during the contract period if the contract is for one year or less, or more often than annually if the contract period is for more than one year, except when changes in Federal or State law or regulations so require. The premium or subscription charge may be renegotiated more often with respect to eligible persons who are not enrolled recipients at the time of the renegotiation. This restriction applies to contracts entered into by the State agency after the effective date of these regulations;

(iii) Provide that the premiums or subscription charges shall not include payment for recoupment of any losses incurred by the contractor for which he has assumed the risk under the same or any prior contract between the parties;

(iv) Provide, for the assumption by the contractor of the underwriting risk. Where the contractor has assumed the full underwriting risk, the contract must provide that the premium or subscription charge paid to the contractor in the contract period constitutes the full discharge of all responsibility of the State agency for the costs of medical care and services covered under the contract and provided to enrolled recipients during such period. In other situations, a risk contract must specify the apportionment of the underwriting risk;

(v) Specify how any "savings" (excess of premiums over allowable costs) will be apportioned between the contractor and the State agency;

(vi) Specify whether the contractor may obtain reinsurance. In the case of health maintenance organizations or other medical providers reimbursed on a prepaid capitation basis and which have assumed an underwriting risk under the contract, the contract shall require the contractor to retain, after reinsurance, a substantial portion of the risk; and

(vii) Specify the actuarial basis for computation of the premium rate or subscription charge specified in the contract.

(3) *Fiscal agents.* In addition to the requirements specified in paragraph (c) (1) of this section, a State plan which provides for contracts with

fiscal agents must also provide that such contracts will:

(1) Include termination procedures requiring the contractor to supply promptly all material necessary for the continued operation of the payment and related systems. In the event the fiscal agent or his subcontractors have proprietary rights to this material, the contracts and subcontracts must provide that the fiscal agent or subcontractor offer to the State one or more of the following options: Purchase, lease, or buying the use of such material. Such material includes:

(A) Computer programs;
(B) All necessary data files;
(C) User and operation manuals, and other documentation;
(D) System and program documentation; and

(E) Training programs for State agency staff, their agents or designated representatives, in the operation and maintenance of the system;

(ii) Establish the amount to be paid the contractor for performing the required functions, the basis for the amount and when payment is to be made; and

(iii) Provide that payment to providers shall be made in accordance with § 450.30 of this chapter.

(4) *Private nonmedical institutions.* In addition to the requirements specified in paragraph (C)(1) of this section, a State plan which provides for contracts for prepayment of services from private nonmedical institutions must also provide that such contracts will:

(i) Specify the capitation amount which shall be based on the cost of services provided (in accordance with § 450.30 of this chapter);

(ii) Specify when the capitation amount shall be paid.

(5) *Additional requirements for contracts with medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients and health maintenance organizations.* In addition to the requirements specified in paragraphs (c) (1) and (2) of this section, a State plan for medical assistance which provides for contracts with other medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients and health maintenance organizations must also provide that such contracts will:

(i) Specify the period during which enrollment shall be open and provide that the contractor will accept persons eligible to be covered under the contract in the order in which they apply for enrollment without restrictions, except as may be authorized by the Secretary, up to the limits authorized in the contract with the State. In the case of an HMO, open enrollment must be in accordance with the provisions of section 1301(c) of the Public

Health Service Act as amended by Pub. L. 94-460;

(ii) Provide, in the case of an HMO or prepaid health plan, that the contractor will serve a population broadly representative of the various age, social, and income groups within the area it serves, and that less than 50 percent of the enrolled members will be individuals receiving benefits under title XVIII and individuals receiving assistance under title XIX of the Social Security Act. The 50 percent requirement will not apply for a period of three years from the date on which an HMO or prepaid health plan enters into a contract with the State agency, or three years from October 6, 1976 (whichever is later) under the following conditions:

(A) A HMO contractor must make continuous efforts and progress toward achieving compliance with this requirement. This must be demonstrated to the satisfaction of the Secretary by the yearly submission of plans showing milestones for each year of the three year period.

(B) A prepaid health plan contractor may apply to the Secretary for waiver of this requirement based on good cause shown, and for an indefinite period.

(iii) Provide, in the case of other medical providers reimbursed on a prepaid capitation basis that the contractor will serve a population broadly representative of the various age, social, and income groups within the area it serves;

(iv) Provide that enrollment is voluntary;

(v) Specify the period of enrollment, which shall be for a reasonable period of time, so as to assure continuity of care and avoid excessive costs due to rapid turnover of enrollment;

(vi) Specify the reasons for which a recipient's enrollment may be terminated. Such reasons may not include termination by the contractor because of an adverse change in a recipient's health status. The contract must provide that the recipient shall have the right to terminate his enrollment without cause within 30 days of such enrollment, and may allow termination without cause at any time during the contract period. Each termination by the contractor shall have the approval of the director of the medical assistance unit of the single State agency or his designee.

(vii) Provide that to the extent feasible and appropriate, each enrollee is afforded the choice of a health professional providing services who will supervise and coordinate his care;

(viii) Provide that all medical services covered under the contract which are required on an emergency basis be available on a 24-hour, seven-day-a-week basis, either in the contractor's own facilities, or through ar-

rangements, to be approved by the single State agency, with another provider;

(ix) Provide for prompt payment by the contractor, in accordance with §450.30 of this chapter of all in-area or out-of-area services which are required by the contract and rendered by providers with which the contractor does not have arrangements, and which are medically urgent, that is, they are necessary to prevent jeopardization of the patient's health or infliction of severe pain and discomfort which would occur if use of the contractor's facilities were required;

(x) Provide for an internal enrollee grievance procedure, approved in writing by the director of the medical assistance unit of the single State agency. Such procedure shall provide for expeditious resolution of grievances by personnel at a decisionmaking level with authority to require corrective action;

(xi) Provide for an internal quality assurance system consistent with Federal requirements under title XIX. This system shall provide for review by appropriate health professionals of the process followed in the provision of health services; and shall utilize systematic data collection of performance and patient results, provide interpretation of such data to the practitioners, and provide for instituting needed change;

(xii) Provide that the contractor shall submit to the single State agency for prior approval its marketing plans, procedures and materials.

(xiii) Provide that enrollees will be advised concerning the appropriate use of health care and the contributions they can make to the maintenance of their own health;

(xiv) Provide for development of a medical record-keeping system through which all pertinent information relating to the medical management of the enrollee is accumulated and is readily available to appropriate professionals; and

(xv) Provide, in contracts in which the contractor does not assume any underwriting risk, that payment to the contractor for services provided under the contract (including any necessary retroactive adjustments) will not exceed the amounts which could be paid for such covered medical and remedial care and services actually delivered by the contractor to eligible recipients under the requirements imposed for specific provider services as set forth in §450.30 of this chapter.

(xvi) Provide in contracts with HMOs, that the HMO will provide services and benefits in the manner prescribed by section 1301(b), and be organized and operated in the manner prescribed by section 1301(c) of the Public Health Service Act.

(6) Additional State plan requirements relating to medical providers re-

imbursed on a prepaid capitation basis for medical services to enrolled recipients and health maintenance organizations. In addition to the requirements specified in paragraph (c) (1), (2), and (5) of this section, a State plan which provides for contracts with other medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients and health maintenance organizations must also provide:

(i) That the single State agency will obtain from the contractor proof of financial responsibility, including adequate protection against the risk of insolvency, and proof of capability to provide the services under the contract efficiently, effectively, and economically;

(ii) That the single State agency will determine that adequate feasibility and planning studies have been made for the enrollment of a sufficient number of members to assure the economic viability of the organization;

(iii) That the single State agency will obtain assurances that the health services required by its members will be received promptly as appropriate and that the services which are received will meet quality standards;

(iv) That the single State agency will establish a system of periodic medical audits (at least once a year for each contractor) to assure quality and accessibility of health care to Medicaid enrollees. This system will provide for the identification and collection of management data for use by medical audit personnel, including reasons for enrollment and disenrollment, and use of services;

(v) For the establishment and implementation of a system for approval of marketing plans, procedures and materials for enrolling eligible recipients in a health maintenance organization, including written criteria for such approval; this system must include provisions that the contractor will not engage in marketing practices which would mislead, misinform, confuse or defraud recipients or the single State agency, for example, claims that the recipient must enroll or lose his Medicaid coverage;

(vi) For dissemination through appropriate health or social service agencies to eligible recipients in the service area of the contractor of factually accurate information, presented in clear, readable and concise form, regarding at least coverage, locations and hours of service, and enrollment and disenrollment practices;

(vii) That payment will not be made on the enrolled recipient's behalf to providers other than the contractor for services rendered during the term of the contract if such services are available under the contract;

(viii) That upon termination of a contract or upon termination of en-

rollment of an enrollee, arrangements will be made to enable recipients formerly enrolled in the HMO to obtain without delay the services to which they are entitled;

(ix) That the single State agency will document the basis for computation of the premium rates or subscription charges it negotiates with the contractor or, if these rates or charges are fixed by the single State agency without negotiation, it will document the basis for computation of these fixed rates or charges;

(x) For the establishment of procedures to monitor enrollment and disenrollment practices and insure proper implementation of grievance procedures of the contractor; and

(xi) Provide that, where the contract does not include all services available under the State plan, those services not included shall be accessible and available either by referral arrangement with the contractor or by some other effective means; services in addition to those available under the State plan may be covered under the contract in accordance with §449.10(a)(6)(vii) of this chapter.

(d) *Federal financial participation.*
(1) Federal financial participation (FFP) shall be available for payments made to a contractor under this section only for periods in which a contract fulfilling all the requirements of this section and the appropriate requirements of Part 74 of 45 CFR is in effect. The Secretary may deem such a contract not to be in effect, for the purposes of this paragraph, for any period, if, after investigation, he determines that for such period there was a substantial failure of either party to the contract to carry it out in accordance with its terms or the requirements of this section. States upon request will receive, in accordance with section 1116(d) of the Act, a reconsideration of the Secretary's determination under the provisions of this paragraph.

(2) FFP will be available in payments to provisional HMOs. A provisional determination that an entity is an HMO remains effective until a final determination is made by the Secretary, or until the contract expires whichever is earliest. A determination by the Secretary is not considered final until all administrative (but not judicial) appeal procedures have been exhausted or until the time for making a request for administrative review has lapsed without a request for review of an adverse determination. Adverse determinations will not result in denial of FFP for any period during which an entity was determined to be a provisional HMO.

(3) All expenditures which can reasonably be expected to exceed \$100,000 in total during the contract must be approved in writing by the

Regional Medicaid Director prior to the execution of the contract.

(4) No payment shall be made to a State for expenditures for services provided by any entity:

(i) Which is paid on a prepaid capitalization or other risk basis and;

(ii) Provides for inpatient hospital services and any other required Medicaid service or any three or more of the required Medicaid services, unless that entity has been determined to be an HMO or a provisional HMO. However, payments made to organizations specified in section 1903(m)(2)(B) (i), (ii), or (iii) of the Act may be made without regard to this limitation;

(iii) Under all contracts in which an underwriting risk is assumed, the total amount paid for carrying out the provisions of the contract will be regarded as a medical assistance cost;

(iv) Under other contracts in which no underwriting risk is assumed, the amounts paid for furnishing medical care and services to eligible recipients will be regarded as a medical assistance cost. Amounts paid for performing other agreed-upon functions will be regarded as an administrative cost; and

(v) Under contracts with fiscal agents the amount paid to the provider of medical services will be considered as a medical assistance cost, and the amount paid to the contractor for performing the agreed-upon functions will be regarded as an administrative cost.

(Secs. 1102, 1871, 1876 of the Social Security Act, 49 Stat. 647 as amended, 79 Stat. 331, 86 Stat. 1396; (42 U.S.C. 1302, 1395hh, and 1395mm).)

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; No. 13.800, Health Insurance for the Aged and Disabled—Hospital Insurance; No. 13.801, Health Insurance for the Aged and Disabled—Supplementary Medical Insurance.)

NOTE.—The Health Care Financing Administration has determined that these documents do not require preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: October 27, 1977.

ROBERT A. DERZON,
*Administrator, Health Care
Financing Administration.*

Approved: February 2, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-3695 Filed 2-9-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS
COMMISSION

[Docket No. 21399; FCC 78-69]

PART 89—PUBLIC SAFETY RADIO SERVICES

One-Way Paging Operations in Special
Emergency Radio Service

AGENCY: Federal Communications
Commission.

ACTION: Report and order.

SUMMARY: This document permits the use of one-way alerting transmissions by ambulance and rescue organizations on certain Special Emergency Radio Service base/mobile frequencies. This action is taken so volunteer groups will not have to purchase additional radio equipment.

EFFECTIVE DATE: March 20, 1978.

ADDRESS: Federal Communications
Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION
CONTACT:

Richard Taube, Safety and Special
Radio Services Bureau, 202-632-
6497.

REPORT AND ORDER—(PROCEEDING
TERMINATED)

Adopted: January 31, 1978.

Released: February 8, 1978.

In the matter of amendment of Part 89 of the Commission's rules and regulations concerning one-way paging operations in the Special Emergency Radio Service, Docket No. 21399.

1. On September 14, 1977, published at 42 FR 49488, September 27, 1978, the Commission proposed to change its rules concerning the frequencies which can be used for radio paging operations in the Special Emergency Radio Service.

2. Under the present rules, because of interference and compatibility problems that normally result when one-way paging operations are combined with regular two-way voice communications, all paging operations in the Special Emergency Radio Service must be moved to exclusive paging-only frequencies after 1979. The changes in this proceeding would allow continued use of certain of the regular two-way base/mobile frequencies on a limited basis for alert-paging operations.

3. This alert-paging use would be to signal rescue squad and ambulance personnel when they are needed to respond to an emergency situation. After being alerted, these personnel usually go to a vehicle or station where they can radio transmit back to the dispatcher for detailed instructions. The basis for allowing this type of paging on the regular base/mobile

frequencies is that the Commission has found that alert-paging messages do not generate the interference problems associated with most other paging operations.

4. In general, the comments supported this proposal.¹ Most parties stated that allowing alert-paging on regular frequencies would afford licensees convenience and flexibility in their rescue and medical operations and also would result in significant cost savings by permitting use of the same radio equipment for both alerting their personnel and dispatching their vehicles.

5. There were objections, however, from State public health communications offices in Nebraska and Tennessee. These parties essentially contend that the interference from alert-paging operations is not distinguishable from the interference generated by other paging transmissions and would cause similar serious compatibility problems.

6. The Commission finds that it cannot agree with this position. The intermittent nature and the comparative low volume of alert-paging messages in most rescue squad and ambulance operations have been clearly demonstrated. These operations simply do not require nor do they generate the air traffic that is typical in regular hospital administrative activities. A number of the comments addressed this issue as follows:

The Associated Public Safety Communications Officers, Inc. (APCO) states:

APCO believes that the differences between "page alerting" which is emergency-

dispatch oriented, and "paging" which is often administrative, non-emergency in nature, are sufficient to warrant different considerations in the rules.

Similarly, the Virginia Association of Volunteer Rescue Squads, Inc. (VAVRS) notes:

A survey conducted in 1977 indicates that tone-alert receivers are used or planned for use for 100 or 71 percent of Virginia's rescue squads * * * by E.M.S. alerting * * * It is the position of the VAVRS that hospital paging activities and E.M.S. alerting on the frequencies designated in FCC R&R 89.525(f)(2) are not compatible.

Motorola also commented on these issues:

Paging is a self-contained, one-way mode of communications. Once the page is sent, the recipient knows exactly what to do; no further communication is needed. That is why many paging users have relatively elaborate codes to assure that complete information is transmitted. Because paging is the communications vehicle of this type of licensee, the volume of paging transmissions tends to be substantial, reaching as high as 3,000 per day at a large metropolitan hospital.

By contrast, "alerting" is generally merely the prelude to a two-way transmission; it in effect announces to the recipient: "There is a problem, an emergency". While in a few cases, the alert signal can, by itself, direct emergency personnel to proceed to a predetermined location, in most instances it demands a follow-up two-way communication * * * Since the "alerting" function is at most a preliminary adjunct to the fundamental base-mobile use of radio, it would be employed sporadically (11-12 times a day would encompass the heaviest predicted use) and will be of extremely short duration.

These arguments are consistent with the Commission's experience. It is our conclusion that a frequency structure as proposed in this proceeding is a valid and necessary approach to accommodate alert-paging operations.

7. The specific proposals were to permit alert-paging on four frequencies in the 30-50 MHz band and on eight frequencies in the 155 MHz band. There were differing views in the comments as to the adequacy of these allocations. In the 30-50 MHz band, a number of parties argued for permitting alert paging on all of the twenty-three frequencies available in the Special Emergency Radio Service in this range. Bethesda-Chevy Chase Rescue Squad, Inc. noted:

We believe that restricting alert-paging to only four low band frequencies will result in a significant economic burden for the vast majority of licensees in the low band sector of the Special Emergency Service. They will be required to either purchase and operate two separate systems, or change their operating frequency to be able to obtain the needed alerting service.

New Jersey is concerned with the loading effect as developed by its statistical survey of alert-paging requirements for its systems on these low band frequencies:

* * * transmissions on these frequencies will increase 118 percent * * * We question whether radio channels in some areas can accommodate doubling of transmission time * * * If the Commission elects to permit paging/alerting in the 30-50 MHz band, it should be permitted on all 19 channels.

Similar views were presented by the Maryland Institute for Emergency Medical Services, VAVRS, and APCO, with the latter organization stating:

APCO submits there is no reason to restrict such operations from any of the channels in the 30-50 MHz band, with perhaps the exception of the 47.42 MHz channel.²

8. The arguments for allowing alert-paging on all of the 30-50 MHz band frequencies are compelling. Permitting use of these additional channels should contribute to greater flexibility and will tend to spread the loading of this type of operation so as to further minimize any adverse impact on regular two-way voice operations. The Commission is adopting this recommendation.

9. Some comments suggested expansion as well in the 155 MHz band. Here, the Commission proposed to allow alert-paging on all of the available channels, excepting those five frequencies that are primarily assignable for emergency medical systems. As its reason for denying alert-paging operations on medical channels, the Commission stated in its Notice that "since these five channels carry medical communications associated with life and death situations, we will continue to preclude 'alerting' transmissions on these frequencies." Nevertheless, it is suggested that we permit alert-paging on these frequencies when the system is utilized only for dispatch operations. The point being asserted is that channels for dispatch operations would not involve life and death "doctor-talk" messages so there could be no interference to that type of emergency situation. However, while this may be true in a given system, the frequencies involved are required to be shared by multiple licensees in every geographic area. Thus, there is every expectation that even though, for example, Licensee A may be operating a simple medical ambulance dispatch system, Licensee B in the same area may be providing physician instruction for the emergency treatment of enroute patients on the same channels. In short, the likelihood of an alert-paging signal interfering with emergency transmissions on medical channels is too great to justify use of this technique and we are not modifying the proposals in this regard.

10. A different approach appears to be appropriate, however, with regard

²47.42 MHz is available only to national organizations established for relief purposes.

¹The following parties submitted timely comments or reply comments in response to the Notice of Proposed Rule Making in this proceeding: North Carolina Department of Human Resources; S.W. Pennsylvania Emergency Medical Service Institute; Virginia Association of Volunteer Rescue Squads, Inc.; Chatham County, North Carolina; Six-County Commissioners Organization, Richfield, Utah; Utah Department of Social Services; Permian Basin Regional Planning Commission, Midland, Texas; Utah State Hospital Association; Iowa Chapter, Associated Public-Safety Communications Officers, Inc.; Chatham County Emergency Medical Service Executive Committee, North Carolina; Michigan Department of Public Health; Thomasville Rescue Squad, North Carolina; Motorola, Inc.; Maryland Institute for Emergency Medical Services; National Associated Public-Safety Communications Officers, Inc.; New Jersey Department of Health; South Orange Rescue Squad, North Carolina; Pee Dee Council of Governments, Troy, North Carolina; Alamance County Rescue Unit, Inc., North Carolina; New Jersey Hospital Association; Tennessee Department of Public Health; New Jersey Office of Frequency Coordination; National Ski Patrol System, Inc.; Illinois Department of Public Health; North Mississippi EMS Authority; Missouri Department of Social Services; Nebraska Department of Health; Bethesda-Chevy Chase Rescue Squad, Inc., Maryland.

to medical operations in the 460-470 MHz band. In this frequency band, the Commission's rules provide two frequencies that are primarily intended for ambulance dispatch in emergency medical systems. Eight additional frequencies are allocated for bio-medical telemetry, "doctor-talk", and other emergency hospital-to-ambulance medical purposes. The two dispatch channels are 462.950/467.950 and 462.975/467.975 MHz. Many of the comments recommended that alert-paging be permitted on these two dispatch channels.

North Carolina states:

*** as emergency medical communications systems are improved and upgraded, there will be a requirement for appropriate dispatching and alerting capabilities within the UHF frequency band *** Since the Commission in its present rule making is attempting to alleviate some of the difficulties associated with the dispatching of ambulance units, the North Carolina Office of Emergency Medical Services requests the frequency pairs of 462.950/467.950 and 462.975/467.975 MHz be included in the frequencies proposed as available for alerting via radio page ***

Motorola, The Maryland Institute for Emergency Medical Services, APCO, and VAVRS also noted the trend to utilizing the UHF dispatch channels in medical ambulance operations and urged the addition of the alert-paging capability at this frequency range.

11. The Commission has considered these arguments very carefully. We recognize the economies that can be afforded and the simplicity that can be achieved by permitting alert-paging in UHF medical radio systems. Pending a clear picture of the trends and requirements in medical radio applications, paging of any nature has not been previously authorized on the EMS frequencies at this frequency range. It is our belief, however, that the alert-paging function can be accommodated to a limited extent at this frequency range on the 462/467 MHz band frequency pairs available for dispatch operations in medical systems and we are including provisions for this capability. We note, nevertheless, that additional transmissions of this nature can present a frequency loading problem on only two frequency pairs. Accordingly, we believe alert-paging on these frequencies would best be accomplished in those medical radio systems that are centrally dispatched under an area-wide coordinated radio communications plan. Licensees are encouraged, therefore, to employ these system approaches to help assure that necessary priorities are adhered to in the medical dispatching function.

12. Remaining comments dealt with suggestions for clarification of proposed § 89.525(f)(25) as to the limitations on use and licensing for alert-paging. We have modified the adopted

rule to incorporate these clarifications. There were also a number of comments with proposals for minimizing the interference potential of alert-dispatch transmissions. These include recommendations for limitations on audibility, duration, and power of tone alert transmissions; and suggestions for greater emphasis on pre-monitoring, and for restrictions to emergency-only use. The Commission believes, however, that while any or all of these limitations could prove to be required, the basic premise of this rule making proceeding is that alert-paging is inherently a controlled and moderate communication requirement which should not unduly encroach on the use of the frequencies involved. Moreover, this function will be permissible only on a secondary basis and any given alert-paging operation that unduly interferes with primary transmission needs would have to be curtailed. The Commission feels that this is adequate safeguard for dealing with any problems that might develop.

13. In consideration of the foregoing, the Commission determines that adoption of the rule changes proposed in the Notice, as modified herein for permitting alert-paging operations on certain frequencies in the Special Emergency Radio Service is in the public interest.

14. Accordingly, it is ordered, That, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 89 of the Commission's rules is amended, effective March 20, 1978, as shown below. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 89 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. Section 89.523(d) is amended as follows:

§ 89.523 Station limitations.

(d) Effective August 15, 1974, paging operations may be authorized in the Special Emergency Radio Services only on frequencies assigned under the provisions of § 89.525(f) (12) and (25). Paging operations on other frequencies, authorized prior to August 15, 1974, may be continued for the balance of the license term then effective. In addition, such operations may be renewed until January 1, 1980, subject to the condition that harmful interference is not caused to regularly authorized operations in the Special Emergency Radio Service.

2. Section 89.525(e) table is amended and paragraph (f)(25) is added to read as follows:

§ 89.525 Frequencies available to the Special Emergency Radio Service.

(e) ***			
Frequency or band	Class of station(s)	Limitations	
Megahertz:			
33.02.....	Base and mobile...	6,25	
33.04.....	do	6,25	
33.06.....	do	6,25	
33.08.....	do	25	
33.10.....	do	6,25	
35.84.....	Base	12,13	
35.88.....	do	12,13	
37.90.....	Base and mobile...	6,25	
37.94.....	do	6,25	
37.98.....	do	6,25	
43.64.....	Base	12	
* * *			
43.68.....	Base	12	
45.92.....	Base and mobile...	25	
45.96.....	do	25	
46.00.....	do	25	
46.04.....	do	25	
47.42.....	do	7,25	
47.46.....	do	25	
47.50.....	do	25	
47.54.....	do	25	
47.58.....	do	25	
47.62.....	do	25	
47.66.....	do	25	
* * *			
155.160.....	Base and mobile...	16,25	
155.175.....	do	16,25	
155.205.....	do	16,25	
155.220.....	do	25	
155.235.....	do	16,25	
155.265.....	do	16,25	
155.280.....	do	25	
155.295.....	do	16,25	
155.325.....	do	16,17	
* * *			
462.950.....	Base and mobile...	1,8,24,25	
462.975.....	do	1,8,24,25	
* * *			
467.950.....	Mobile only	1,8,22,24,25	
467.975.....	do	1,8,22,24,25	
* * *			

(f) ***

(25) A licensee regularly conducting two-way communication operations on this frequency may also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

[FR Doc. 78-3751 Filed 2-9-78; 8:45 am]

[4910-62]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF
TRANSPORTATION

[OST Docket No. 1; Amend. No. 1-132]

PART 1—ORGANIZATION AND DELEGATIONS
OF POWERS AND DUTIESAppendix A—Delegations and Redelegations
by Secretarial Officers

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This is the public notice of the redelegation from the Director, Research and Special Programs Directorate, to the Director, Materials Transportation Bureau, of authority in 49 CFR 1.53 (a) and (b) related to the transportation of hazardous materials and pipeline safety.

EFFECTIVE DATE: October 21, 1977.

FOR FURTHER INFORMATION
CONTACT:

Richard R. Clark, Office of the General Counsel, Department of Transportation, 400 Seventh Street NW., Washington, D.C. 20590, 202-426-4723.

SUPPLEMENTARY INFORMATION: Richard R. Clark, Office of the General Counsel, is responsible for the legal sufficiency of this redelegation.

Appendix A [Amended]

Appendix A of Part 1, Title 49, Code of Federal Regulations, is amended as follows:

• • • • •

Director, Materials Transportation Bureau. The authority delegated to the Director of the Research and Special Programs Directorate by the Secretary of Transportation in 49 CFR 1.53 (a) and (b) relating to the transportation of hazardous materials and pipeline safety is hereby redelegated to the Director of the Materials Transportation Bureau.

• • • • •

(49 CFR 1.53 (a) and (b).)

Issued in Washington, D.C., on October 21, 1977.

JOHN J. FEARNSIDES,
Acting Director, Research and
Special Programs Directorate.

[FR Doc. 78-3673 Filed 2-9-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE
COMMISSIONSUBCHAPTER A—GENERAL RULES AND
REGULATIONS

[Service Order No. 1300]

PART 1033—CAR SERVICE

Chicago & North Western Transportation Co.
Authorized To Operate Over Tracks of Chi-
cago, Milwaukee, St. Paul & Pacific Railroad
Co. at Oshkosh, Wis., and Fond Du Lac, Wis.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Service Order No. 1300).

SUMMARY: The lines of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (MILW) serving Oshkosh, Wis., and Fond du Lac, Wis., are inoperable because of heavy snow at these two locations, which is depriving industries located adjacent to the MILW tracks at these two locations of railroad service. Service Order No. 1300 authorizes the Chicago & North Western Transportation Co. to operate over tracks of the MILW in Oshkosh and Fond du Lac in order to restore railroad service to these shippers.

DATES: Effective 11:59 p.m., February 3, 1978. Expires 11:59 p.m., February 28, 1978.

FOR FURTHER INFORMATION
CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION:
The order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 3rd day of February 1978.

The lines of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (MILW) serving Oshkosh, Wis., and Fond du Lac, Wis., have become inoperable because of heavy snow. Numerous shippers located adjacent to the tracks of the MILW have been deprived of essential railroad service because of the inability of the MILW to switch the industries at Oshkosh and Fond du Lac. The Chicago & North Western Transportation Co. (CNW) has agreed to operate over the tracks of the MILW at Oshkosh and Fond du Lac in order to restore essential railroad service to these shippers. The MILW has consented to such use of its tracks by the CNW.

It is the opinion of the Commission that an emergency exists requiring operation of CNW trains over these

tracks of the MILW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days' notice. It is ordered, That:

§ 1033.1300 Car Service Order 1300.

Chicago & North Western Transportation Co. authorized to operate over tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. at Oshkosh, Wis., and Fond Du Lac, Wis.

(a) The Chicago & North Western Transportation Co. (CNW) is authorized to operate over tracks of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (MILW) at Oshkosh, Wis., and Fond du Lac, Wis., for the purpose of serving industries located adjacent to such tracks.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the CNW over tracks of the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved by the CNW over the tracks of the MILW shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., February 3, 1978.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 28, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, John R. Michael. Member John R. Michael not participating.

H. G. HOMME, JR.
Acting Secretary.

[FR Doc. 78-3821 Filed 2-9-78; 8:45 am]

[7035-01]

[Ex Parte 252 (Sub-No. 2)]

PART 1036—INCENTIVE PER DIEM CHARGES ON BOXCARS AND GONDOLA CARS

Incentive Per Diem Charges—Gondolas

AGENCY: Interstate Commerce Commission.

ACTION: Stay of effective date of regulations which concern incentive per diem charges on gondola cars.

SUMMARY: By order served January 31, 1978, the Interstate Commerce Commission stayed the effective date of the regulations until further order of the Commission. The stay was issued in order to allow the Commission to reopen the record and allow the parties to the proceeding an opportunity to comment on a revised economic forecast and the conclusion therefrom that the supply of plain gondola cars is adequate for purposes of section 1(14)(a) of the Interstate Commerce Act.

EFFECTIVE DATE: January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Janice M. Rosenak, Deputy Director, Section of Rates, Interstate Commerce Commission, Washington, D.C. 20423; phone No.: 202-275-7693.

SUPPLEMENTAL INFORMATION: A petition was jointly filed October 14, 1977, by Chicago and North Western Transportation Co.; Soo Line Railroad Co.; Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; and Trustee of Rock Island and Pacific Railroad Co., requesting that the Commission reopen the record in this proceeding to receive evidence not available at the time the record was made; or in the alternative to stay the effective date of the Commission's order served April 14, published 40 CFR page 23511 on May 9, 1977, and order of September 16, 1977, published in 42 CFR page 48883, pending judicial review; or vacation of the effective date of the application of incentive per diem pending judicial review.

The new evidence offered by petitioners concerns the changed economic conditions and future forecasts of the steel industry that have occurred within the last year. Specifically, the petitioners allege that the Commission's conclusion regarding future steel production and hence a shortage of gondola cars has been thoroughly impeached by the report issued on Friday, October 7, 1977, by the Administrative Council on Wage and Price Stability. The Chessie and Norfolk and Western Railway replied in opposition.

By order served October 28, 1977 and published at 42 CFR page 57367, on November 11, 1977, the effective date of the incentive per diem regulations was postponed to December 1, 1977. By a subsequent order served November 29, 1977, the regulations were further postponed until February 1, 1978, in order to allow the Commission sufficient time to review the Commission's projection of the future demand for gondola cars. Therein, the Commission stated that upon completion of its analysis, it would report its findings and that further comments of the parties would be invited.

The Commission has completed its analysis of the current economic situation and has revised downward the prior forecast for gondola car demand. The Commission's revised analysis shows: (1) That while the overall economic outlook between now and 1985 has not changed dramatically, expectations for the production of steel are down considerably, (2) steel products are shown to be a major user of plain gondola cars (GB type), (3) importation of foreign steel products is shown to have a marginal influence on the total demand for plain gondola cars, (4) average daily plain gondola shortages occurring in 1977 were short term, (5) that in comparing plain gondola carloadings in the revised forecast to the prior Ex Parte No. 252 (Sub-No. 2) forecast in terms of "carloadings per car" that a substantial decrease in the demand for gondola cars is shown through 1985, and (6) that projected "carloadings per car" will not recover to its 1973 and 1974 level until at least 1983.

Based upon the attached revised economic forecast the Commission concludes that the supply of plain gondola cars is adequate for purposes of section 1(14)(a) of the Interstate Commerce Act.

The Commission has ordered: (1) That the proceeding be reopened and that the revised economic forecast be entered into the record.

(2) That the parties to the proceeding be allowed to comment upon the economic analysis and the Commission conclusion within 60 days from the service date of its order, and that replies thereto be filed no later than 45 days thereafter.

(3) That the incentive per diem regulations prescribed in the Commission report, 353 I.C.C. 612, and modified by Commission order dated September 14, 1977, and later postponed until February 1, 1978, be stayed until further order of the Commission.

Decided January 31, 1978.

By the Commission (Commissioner Murphy concurring in part, dissenting in part. Commissioner Gresham, concurring in part).

COMMISSIONER MURPHY, Concurring in part, dissenting in part:

I am in accord with the majority to the extent that it reopens the proceeding and stays the effective date of the regulations.

My disagreement lies with the majority's conclusion, based on a purported revision of an economic forecast, that the supply of plain gondolas is now adequate. Conclusions must be supported by appropriate findings. Moreover, the conclusion, if valid, would nullify any further proceedings herein. In all fairness, I believe that the parties and other interested persons should be allowed to present their views on the revised economic forecast before any decision on the adequacy of the plain gondola fleet is reached.

Accordingly, to the extent that the views expressed above differ from the majority's decision, I respectfully dissent therefrom.

COMMISSIONER GRESHAM, Concurring in part:

I agree with the majority's decision to stay the effective date of the regulations and to reopen the proceeding for the receipt of new evidence.

I cannot, however, endorse the procedures chosen for the reopening. The appendix to this order was prepared by the Commission's Bureau of Economics and it should be clearly labeled as the staff's work product. Instead, the majority enthusiastically embraces the study as "the Commission's conclusions." This gives the unfortunate appearance that we have already made up our minds on the issue and that subsequent comments by the parties will receive little serious consideration. I believe that the prudent course is to withhold any "Commission conclusions" until all parties have commented upon the staff's study.

It is obvious that an ultimate finding of an adequate gondola car supply will moot all other issues in this proceeding. However, our prior report made the specific finding (353 I.C.C. at 633) that: "Because there are no seasonal shortages of plain gondola cars, unlike boxcars, a year-round application of IPD is warranted."

The staff's forecast of recurring peak demand for gondolas in the second quarter flatly contradicts our prior finding. I would encourage the parties to address this issue in their comments on the staff's forecast.

H. G. HOMME, Jr.,
Acting Secretary.

Section 1036.7 of Part 1036 of Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

§ 1036.7. Effective date.

The rules set forth in §§ 1036.1 and 1036.2 shall apply for a 6-month period from September 1 of each year

through February 28 of the following year on general service, unequipped boxcars. The rules as they apply to gondola cars are stayed until further order of the Commission.

[FR Doc. 78-3754 Filed 2-9-78; 8:45 am]

[7035-01]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 338]

PART 1109—REQUIREMENTS AND PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Standards and Procedures for the Establishment of Adequate Railroad Revenue Levels

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is adopting regulations to set forth standards and procedures to be followed by the Commission in determining the adequacy of railroad revenues and in assisting the railroads to attain adequate revenues. Adequate revenue levels should cover operating expenses and include an economic profit or return on capital employed in the business. The regulation is necessary to implement recent legislation.

EFFECTIVE DATE: February 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Deputy Director, or Harvey Gobetz, Assistant Deputy Director, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20434, 202-275-7693 or 202-275-7656.

SUPPLEMENTARY INFORMATION: This proceeding was instituted to implement section 15a(4) of the Interstate Commerce Act (49 U.S.C. 15a(4)). That section was enacted by section 205(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 41). As pertinent, it provides that:

With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays,

assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation, and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels.

Notice of the institution of this proceeding was published in the *FEDERAL REGISTER* on March 16, 1977 (42 FR 14740).

Comments from interested parties have been received and considered, and the Commission has issued a report and order adopting a final regulation. The regulation provides that a proceeding shall be conducted each year to determine revenue adequacy for the Nation's railroads individually and on a composite basis. It further provides that adequacy of revenue will be a factor considered both in general rate increase proceedings and in individual rate proceedings. The regulation, effective February 5, 1978, is set forth below.

Issued at Washington, D.C., January 31, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

Accordingly, 49 CFR 1109 is amended by adding a new § 1109.25 as follows:

§ 1109.25 Standards and procedures for the establishment of adequate railroad revenue levels.

In order to assist the Nation's railroads in attaining adequate revenue levels, within the meaning of section 15a(4) of the Interstate Commerce Act (49 U.S.C. 15a(4)), the Commission will observe the following standards and procedures.

(a) *Standards.* (1) The revenue adequacy of the Nation's railroads on a composite level shall be judged in accordance with the criteria of section 15a(4) and upon consideration of all pertinent financial indicators, including a rate of return on net investment equal to the cost of capital, other financial ratios, and the flow of funds.

(2) The revenue adequacy of an individual carrier shall be determined in accordance with the criteria of section 15a(4), upon consideration of all pertinent financial indicators and other evidence as to ability to make needed investment.

(3) The need for revenue adequacy will be taken into account and regarded as a highly important factor both in general rate increase proceedings and in individual rate proceedings.

(b) *Procedures.* Each year, the Commission shall make a determination of revenue adequacy for the Class I railroads as a national composite, as a district composite, and individually, according to the following procedures:

(1) On or before April 30 of each year, the Commission shall issue a notice and order, with a concurrent press release, announcing that a revenue adequacy proceeding is to be conducted. The notice and order shall make the Nation's Class I railroads respondents in the proceeding, and shall provide for the submission by interested persons of notices of intent to participate. The notice shall be published in the *FEDERAL REGISTER*.

(2) By May 31 of each year, the Commission shall issue a list of all persons who have indicated an intent to participate, and shall serve the list on the railroads and on all listed participants. Each of the filing and issuances set forth in the following paragraphs of this subsection (b) shall be served on the railroads and on each listed participant.

(3) On or before June 30 of each year, the Commission shall publish a funds flow projection for comment by participants.

(4) By June 30 of each year, all Class I railroads individually and jointly, as appropriate, shall file verified statements containing data consistent with the following requirements. For the purposes of this rule, the revenue requirements used to determine whether a carrier is a class I line-haul railroad, will include only freight service revenues.

(A) Schedules A, I, and J, as set forth and explained at the end of this section. In addition, data on transactions with affiliate shall be submitted as follows: each railroad shall submit details of transactions with its parent, subsidiary, or affiliated companies in each of the last 3 calendar years as follows: (a) advances, whether in cash or property; (b) encumbrances of railroad assets or the assets of a parent, and affiliate, or subsidiary for noncarrier purposes; and (c) any other monetary or property transactions, including the payment and receipt of dividends. Normal transactions, such as interline settlements, and any other considered necessary to and normally considered in the course of railroad business, need not be reported for the purpose of this particular section. After the initial submission of data based on the preceding three calendar years, the carriers are required only to report data based on the immediately preceding calendar year.

(B) A cost of capital study sufficient to support the findings described in paragraph (5)(c) below;

(C) A fair rate of return analysis on a national basis;

(D) A statement of adequate revenue levels based on (1) traffic volume and expenses in the prior calendar year, and (2) estimated traffic volume and expenses for the current year;

(E) Evidence of each carrier's most recent bond ratings and, in the initial submission, of ratings during the preceding three calendar years; and

(F) Such other evidence as they desire to present pertaining to the standards set forth in this regulation. All underlying data used in preparation of the material outlined above shall be made available for inspection upon reasonable request in writing, and shall be furnished by the railroads to the Commission upon request. Official notice will be taken of all the railroads' annual and quarterly reports on file with the Commission.

(5) By July 30 of each year, other interested parties may file reply state-

ments, including evidence and arguments pertinent to the standards set forth in this regulation, and their comments, if any, on the Commission's funds flow projections.

(6) By August 20 of each year, rebuttal to the reply statements may be filed by the railroads, including their comments, if any, on the Commission's funds flow projections.

(7) By October 30 of each year, the Commission will issue a report setting forth the following findings:

(A) An adequate revenue level for the Nation's railroads as a whole and for each of the three districts, stated as a percentage return on net investment.

(B) A determination (with explanation) for each class I railroad as to whether its existing revenue is adequate or inadequate.

(C) A determination of the following cost of capital items:

(i) The cost of embedded debt for each class I railroad, and for the district and national composite.

(ii) The cost of new debt for a selected group of railroads.

(iii) The cost of equity capital based on market value studies of a selected group of railroads.

(iv) The cost of equity capital indicated by studies of comparable earnings.

SCHEDULE A.—Selected financial data

(Dollars in thousands)

Line No. and item (a)	Source ¹ (b)	Calendar year		
		19— (c)	19— (d)	19— (e)
1. Net Income	A.R. sch. 300.			
2. Depreciation and retirements—road	A.R. sch. 322, total depr. and retire. cols.			
3. Depreciation and retirements—equipment	A.R. sch. 330, total depr. and retire. cols.			
4. Long-term debt due within 1 yr	A.R. sch. 200, acct. 764.			
5. Long-term debt due after 1 yr	A.R. sch. 200, total of accts. 765, 766, 766.5, 767, 768, 769, 770.1, and 770.2.			
6. Long-term debt due after 1 yr ²	See L. 5.			
7. Income available for fixed charges	A.R. sch. 300.			
8. Fixed and contingent charges	A.R. sch. 300, add accts. 546, 547, and 548.			
9. Railway operating expenses	A.R. sch. 300, acct. 531.			
10. Railway operating revenues	A.R. sch. 300, acct. 501.			
11. Net railway operating income	A.R. sch. 300, footnote.			
12. Provision for deferred taxes	A.R. sch. 300, acct. 557.			
13. Equity in earnings (losses) of affiliated companies	A.R. sch. 300, Income from affiliated cos.			
14. Total current assets	A.R. sch. 200, total current assets.			
15. Total current liabilities	A.R. sch. 200, total current liabilities.			
16. Shareholders' equity	A.R. sch. 200, total (net) stockholders' equity.			
17. Shareholders' equity ³	See L. 16.			
18. Cash dividends paid	A.R. sch. 305, acct. 623.			
19. Interest expense, amortization of discount on funded debt, contingent interest and release of premiums on funded debt	A.R. sch. 300, accts. 546 (int. exp.)+547+548+546 (contingent interest)—517.			
20. Net investment in railroad property	(A.R. sch. 200, accts. 701+712)+(sch. 211 N-1, line 39, col. (d) minus col. (e)).			
21. Net investment in railroad property ⁴	See L. 20.			
22. Current ratio	L. 14+L. 15.			
23. Dividend pay-out ratio	L. 18+L. 1.			
24. Rate of return on net investment in railroad property ..	L. 11+L. 21.			
25. Rate of return on shareholders' equity	L. 1+L. 17.			
26. Cash flow	Is. 1 thru 3+12—L. 13.			
27. Throw-off to debt ratio, current maturities	L. 26+L. 4.			
28. Capital structure ratio	L. 5+L. 5+L. 16.			
29. Rate of return on total capitalization	L. 1+L. 19+L. 6+L. 17.			
30. Fixed and contingent charge coverage (times)	L. 7+L. 8.			
31. Ratio ry. operating expenses (includes net rents) to ry. operating revenue ..	L. 9+L. 10.			

¹ Annual report sources refer to 1978 proposed annual report form R-1. For years subsequent to 1978, use the comparable annual report sources. For years prior to 1978, see conversion table for schedule A.

² Show average of beginning and end-of-year figure.

³ Show average of beginning and end-of-year figure. Annual report sch. 211N provides year-end data only. Refer to prior annual reports for comparable beginning-of-year data.

RULES AND REGULATIONS

SCHEDULE A

PURPOSE

The purpose of Schedule A is to ascertain the financial posture of the individual railroads and groups of railroads by the analysis of certain key financial data with a view to determining future revenue needs.

INSTRUCTIONS

Schedule A should report financial data for class I carriers only. A separate Schedule A must be prepared for the following: (1) each individual class I carrier; (2) composite district class I carriers; (3) composite nationwide class I carriers, if appropriate.

Each separate Schedule A outlined above must be submitted on two different bases. The first requires that all of the data reported in Schedule A include the effects of the Commission's January 1, 1974, accounting rules changes. Under this basis, a restatement of data for all periods prior to January 1, 1974, is necessary. The second basis requires that all of the data reported in Schedule A exclude the effects of the January 1, 1974, accounting rules changes. Under this second basis, a restatement of 1974 and later data is necessary.

TIME FRAME REQUIREMENTS

Column c—The data reported in column c should be based on the 3d calendar year

preceding the filing of the involved schedule.

Column d—The data reported in column d should be based on the 2d calendar year preceding the filing of the involved schedule.

Column e—The data reported in column e should be based on the calendar year immediately preceding the filing of the involved schedule.

NOTE.—After the initial submission of data for Schedule A, the carriers are required to report only column e data.

SCHEDULE I.—Statement of changes in financial position

(Dollars in thousands)

Line Schedule No.	Line (a)	Column (b)	Description (c)	Calendar year 19— (e)	Calendar year 19— (f)	Calendar year 19— (g)
SOURCES OF WORKING CAPITAL						
1	300	62	Working capital provided by operations:			
			(b) Net income (loss) before extraordinary items			
			Add expenses not requiring outlay of working capital; (subtract) credits not generating working capital:			
2	324	17	(b) Retirement of nondepreciable property			
3	396		Loss (gain) on sale or disposal of tangible property			
4	NOTE A		Add depreciation and amortization expenses			
5	300	5	(b) Net increase (decrease) in deferred income taxes			
6	300	35	(a) Net decrease (increase) in parent's share of subsidiary undistributed income for the year			
7	200	74, 77	(b)-(c) Net increase (decrease) in noncurrent portion of estimated liabilities			
8			Other (specify):			
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19	300	68	Total working capital from operations before extraordinary items			
			(b) Extraordinary items and accounting changes			
			Add expenses not requiring outlay of working capital; (subtract) credits not generating working capital:			
20	300	63	(b) Loss (gain) on extraordinary items			
21	300	65	(b) Net increase (decrease) in deferred income taxes			
22	300	67	(b) Cumulative effect of changes in accounting principles			
			Other (specify):			
23						
24						
25						
26						
27						
28						
29			Total working capital from extraordinary items and accounting changes			
30			Total working capital from operations (lines 18 and 28)			
31			Working capital from sources other than operating:			
32			Proceeds from issuance of long-term liabilities			
33	205	99	Proceeds from sale/disposition of carrier operating property			
	206	99	Proceeds from sale/disposition of other tangible property			
34	204	41	(l) Proceeds from sale/repayment of investments advances			
35	229	15	(k) Net decrease in sinking and other special funds			
			(f) Net decrease in sinking and other special funds			
			Proceeds from issue of capital stock			
			Other (specify):			
36						
37						
38						
39						
40						
41			Total working capital from sources other than operating			
42			Total sources of working capital (lines 29 and 41)			

SCHEDULE I.—Statement of changes in financial position—Continued

(Dollars in thousands)

Line Schedule No.	Line (a)	Column (b)	Description (c)	Calendar year 19— (e)	Calendar year 19— (f)	Calendar year 19— (g)
APPLICATION OF WORKING CAPITAL						
43			Amount paid to acquire/retire long-term liabilities.....			
44	305	10	(b) Cash dividends.....			
45	211	52	(e) Purchase price of carrier operating property.....			
46			Purchase price of other tangible property.....			
47	305	99	(j) Purchase price of long-term investments and advances.....			
	206	99	(i).....			
48	204	41	(e) Net increase in sinking or other special funds.....			
49	229	15	(j) Purchase price of acquiring treasury stock.....			
50			Other (specify):			
51						
52						
53						
54						
55			Total application of working capital.....			
56			Net increase (decrease) in working capital (line 42 less Line 55) (show computations in Schedule 309S).			

Annual report sources refer to the 1977 Annual Report R-1. For years subsequent or prior to 1977, use comparable annual report sources.

NOTE A.—Furnish the actual amount of depreciation and amortization expenses taken during the year. The following can be used as references:

Schedule	Line	Column
322	26	(b)
326	3	(b)
330	9	(b)
214	22	(j)
200	72	(b)-(c)
200	73	(b)-(c)

SCHEDULE I

PURPOSE

Schedule I is designed to provide the Commission with an indication of the carriers' sources and uses of funds over the recent past.

INSTRUCTIONS

Schedule I should report funds flow data for class I carriers only. A separate Schedule I must be prepared for the following: (1) each individual class I carrier; (2) composite district class I carriers; (3) composite nationwide class I carriers, if appropriate.

The term "funds" for the purpose of this Schedule shall include all assets or financial resources even though a transaction may not directly affect cash or working capital. For example, the purchase of property in exchange for bonds or shares of stock would be an application of funds for investment in property provided by the issue of securities.

Sources and uses of funds should be individually disclosed. For example, outlays for fixed assets should not be reported net of retirements.

TIME FRAME REQUIREMENTS

Column e.—The data reported in column e should be based on the 3d calendar year preceding the filing of the involved schedule.

Column f.—The data reported in column f should be based on the 2d calendar year preceding the filing of the involved schedule.

Column g.—The data reported in column g should be based on the calendar year immediately preceding the filing of the involved schedule.

NOTE.—After the initial submission of data for Schedule I, the carriers are required to report only column g data.

SCHEDULE J

Composite affiliate charges to respondents for services rendered

Line No. and nature of service	Calendar year		
	19—	19—	19—
(a)	(b)	(c)	(d)

1. Management services.....
2. Legal services.....
3. Accounting services.....
4. Procurement of materials, supplies, and equipment.....
5. Leasing of land and structures.....
6. Leasing of equipment.....
7. Miscellaneous services.....
8. Total charges to respondents.....

SCHEDULE J—Continued

Composite affiliate charges to respondents for services rendered

Line No. and nature of service	Calendar year		
	19—	19—	19—
(a)	(b)	(c)	(d)

9. Affiliate revenues derived from services to parties other than respondents.....
10. Total affiliate revenues (line 8 and line 9).....
11. Total affiliate income from operations before income taxes.....

SCHEDULE J

PURPOSE

Schedule J is designed to facilitate an assessment of the effect on the carriers' profits of transactions with affiliates.

INSTRUCTIONS

Schedule J should report affiliate data for class I carriers only. A separate Schedule J must be prepared for the following: (1) each individual class I carrier; (2) composite dis-

strict class I carriers; (3) composite nationwide class I carriers, if appropriate.

Affiliate transactions aggregating less than \$30,000 need not be reported in this Schedule.

TIME FRAME REQUIREMENTS (SAME AS SCHEDULE A)

Column b—The data reported in column b should be based on the 3d calendar year

preceding the filing of the involved schedule.

Column c—The data reported in column c should be based on the 2d calendar year preceding the filing of the involved schedule.

Column d—The data reported in column d should be based on the calendar year imme-

diately preceding the filing of the involved schedule.

NOTE.—After the initial submission of data for Schedule J, the carriers are required to report only column d data.

(Sec. 205, Pub. L. 94-210, 90 Stat. 41 (49 U.S.C. 15a(4)).)

[FR Doc. 78-3811 Filed 2-9-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 991]

HOPS OF DOMESTIC PRODUCTION

Proposed Salable Quantity and Allotment
Percentage for the 1978-79 Marketing Year

AGENCY: Agricultural Marketing
Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of hops that may be freely marketed from the 1978 crop. The action is taken under the marketing order for domestic hops to promote orderly marketing conditions.

DATE: Comments due February 28, 1978.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written materials should be submitted, and they shall be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTAL INFORMATION: The proposed salable quantity and allotment percentage would be established in accordance with the provisions of Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601-674). The proposal was recommended by the Hop Administrative Committee.

The proposed salable quantity and allotment percentage for the ensuing marketing year are based upon a recommendation of the Committee made at its meeting of January 17, 1978, and the following estimates for the marketing year beginning August 1, 1978.

- (1) Total domestic consumption of 35,500,000 pounds of hops;
- (2) Minus imports of 11,500,000 pounds of hops to result in domestic consumption of U.S. hops of 24,000,000 pounds;
- (3) Plus total U.S. exports of 29,000,000 pounds of hops to equal 53,000,000 pounds total usage of U.S. hops;

(4) Plus 2,500,000 pounds to adjust for weight loss for hops processed into pellets and extract;

(5) Plus an adjustment of 4,770,000 pounds to provide for adequate supplies should some producer allotments not be fully produced.

Under the proposal, the salable quantity during the 1978-79 marketing year would be 60,270,000 pounds.

The proposed salable percentage of 100 percent is computed by subtracting from this salable quantity 1,000,000 pounds for additional allotment bases for hops of the Fuggle variety pursuant to §§ 991.38(b) and 991.138(c) and dividing the remainder by 59,270,000 pounds, the total of all allotment bases less the 1,000,000 pounds additional allotment bases for Fuggle variety hops.

The proposal is as follows:

§ 991.216 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1978.

The allotment percentage during the marketing year beginning August 1, 1978, shall be 100 percent, and the salable quantity shall be 60,270,000 pounds.

Dated: February 7, 1978.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

(FR Doc. 78-3824 Filed 2-9-78; 8:45 am)

[3128-01]

DEPARTMENT OF ENERGY

Office of Conservation and Solar Application

[10 CFR Part 1010]

ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECT

Proposed Rulemaking and Public Hearing
Regarding Performance Standards

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy is proposing to amend its regulations in order to prescribe performance standards for electric and hybrid vehicles to be purchased or leased for a demonstration program under the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976. This proposal is intended to solicit comments before

the performance standards are prescribed.

DATES: Comments by March 17, 1978, 4:30 p.m.; requests to speak by February 27, 1978, 4:30 p.m.; statements by March 7, 1978, 4:30 p.m.; hearing to be held on March 9, 1978 at 9:30 a.m.

ADDRESSES: Comments, requests to speak at the hearing and statements to: Regulations Management, Room 2214, Box RR, Department of Energy, 2000 M Street NW., Washington, D.C. 20461. Hearing location: Room 3000-A, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Charles E. Pax, (Office of Conservation and Solar Applications), 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-4893.

Robert C. Gillette, (Hearing Procedures), 2000 M Street NW., Room 222A, Washington, D.C. 20461, 202-566-9833.

SUPPLEMENTARY INFORMATION

A. BACKGROUND

Section 4(a) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (Act) (Pub. L. 94-413) requires the Energy Research and Development Administration (ERDA) to establish the Electric and Hybrid Vehicle Research, Development, and Demonstration Project. Section 4(c) of the Act gives ERDA, as a management objective of the project, specific responsibility to "conduct demonstration projects with respect to the feasibility of commercial electric and hybrid vehicles * * *." Section 7(b)(1) of the Act requires ERDA to "promulgate rules establishing performance standards for electric and hybrid vehicles to be purchased or leased pursuant to subsection (c)(1) (acquisition of vehicles for demonstrations)."

The Department of Energy (DOE) became responsible for carrying out the functions of ERDA under the Act, pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95-91). Pursuant to section 7(b) of the Act, DOE proposes to amend Chapter X of Title 10, Code of Federal Regulations, in order to prescribe performance standards for electric and hybrid vehicles to be purchased or leased for use in the demonstration projects to be conducted by DOE under section 7 of the Act.

As required by section 7(a) of the Act, DOE, through an interagency agreement with the National Aeronautics and Space Administration (NASA), developed data characterizing the present state-of-the-art respecting electric and hybrid vehicles to serve as baseline data to be utilized to assist in establishing the performance standards. Track and dynamometer tests were conducted to obtain performance data on a representative number of electric and hybrid vehicles. Information relative to user experience was collected from fleet operators, individual owners and domestic as well as foreign manufacturers of electric vehicles. Data on performance and physical characteristics of many vehicles were obtained from manufacturers and the available literature. This information was compiled and evaluated in the report CONS/1011-1, NASA TM-73756, State-of-the-Art Assessment of Electric and Hybrid Vehicles. This report is available as provided for later in this notice.

The information developed by NASA was used by private contractors, along with information obtained by the contractors themselves, in developing and recommending electric and hybrid vehicle performance standards for DOE. Interim reports on the work of the contractors, Arthur D. Little, Inc. (DAL) and General Research Corp. (GRC), were presented at the Fourth International Symposium on Automotive Propulsion Systems in Washington, D.C. during April 1977. The final reports of ADL (SAN/1335-1, Recommended Performance Standards for Electric and Hybrid Vehicles) and GRC (SAN/1215-1, Electric and Hybrid Vehicle Performance and Design Goal Determination Study) were reviewed and evaluated for DOE by the Society of Automotive Engineers (SAE) in CONS/5053, Final Report: Evaluation and Recommendation of Electric and Hybrid Vehicle Performance Standards. These reports are available as provided for later in this notice.

There was generally close agreement between the recommendations of ADL and GRC and those contained in SAE's review and critique. SAE did, however, recommend that no standard be proposed for the number of passengers or cargo carrying capacity which it believed should be determined by the manufacturers based on the marketplace. SAE also declined to recommend standards for energy consumption, for agricultural vehicles, and for hybrid vehicles due to its stated lack of sufficient test data or background information at its disposal in these areas.

By notice of September 26, 1977 (42 FR 53630, October 3, 1977), ERDA invited written public comments and recommendations with respect to the

standards recommended by the contractors. The September 26 notice referenced 10 CFR Part 791, an ERDA Code of Federal Regulations citation already encompassing the Electric and Hybrid Vehicle Research Development and Demonstration Project's proposed loan guarantee program. With the formation of DOE, DOE is proposing the performance standards in a separate chapter and part of Title 10 of the Code of Federal Regulations, Chapter X, Part 1010.

Eight comments were received from the public, including the battery industry, electric vehicle and components manufacturers and individual citizens. Several expressed the view that standards should be kept at a minimum for this emerging technology. Several expressed the view that the standards should allow top speeds of only 30 to 40 miles per hour (48 to 64 km/h) while others recommended standards requiring sustained cruise capability of 55 miles per hour (88 km/h) with acceleration and size characteristics similar to subcompact vehicles with internal combustion engines. The comments expressed a general desire for higher vehicle range with some recommending ranges of over 100 miles (160 km) while still requiring an inexpensive vehicle. The public comments showed general agreement with the desire for safety comparable to that found in other vehicles. Special hazards associated with the electric vehicle battery (such as shock, explosions and shorts) were also suggested as appropriate for new safety standards.

B. DEVELOPMENT OF THE STANDARDS

As required by section 7(b)(1) of the Act, the proposed standards have been developed taking into account factors of energy conservation, urban traffic characteristics, patterns of use for "second" vehicles, consumer preferences, maintenance needs, battery recharging characteristics, agricultural requirements, materials demand and their ability to be recycled, vehicle safety and insurability, costs, the best current state-of-the-art and reasonable estimates as to the near-term future state-of-the-art, and other relevant considerations. The factors and considerations have been taken into account by the contractors in their reports and by DOE in the entire process of development of performance standards.

In developing the standards, factors affecting energy use and conservation were analyzed and appropriate trade-offs were made between the standards and energy conservation. Surveys and interviews with consumers, urban planners, traffic managers and insurance professionals produced information on use patterns of "second" vehicles, urban traffic characteristics, con-

sumer preferences, costs, safety, and maintenance and insurance considerations. A review of the relevant literature, examination and testing of actual vehicles and discussions with industry and other experts contributed to development of standards based on the best current state-of-the-art and reasonable estimates as to the near-term future state-of-the-art and, in particular, provided information relevant to battery recharging characteristics and other component and subsystem characteristics, costs, materials demand and their ability to be recycled, and other relevant considerations. Agricultural requirements and possibilities of applying vehicles to agricultural uses were considered in consultation with personnel from the Department of Agriculture, agricultural colleges and other knowledgeable individuals.

Section 7(b)(1) of the Act also requires that DOE, in developing the standards, "consult with appropriate experts concerning design needs for electric and hybrid vehicles which are compatible with long-range urban planning, traffic management and vehicle safety," and section 5(a) requires that DOE, in carrying out the project, consult and coordinate with the Department of Transportation (DOT) concerning any functions of DOE, under the Act relating to regulatory activities or other DOT responsibilities, including safety and programs. DOE, in considering questions of compatibility of design needs, has consulted with contractor personnel and other experts in long-range urban planning, traffic management and vehicle safety. Extensive consultation and coordination has been carried out with DOT including the National Highway Traffic Safety Administration and the Transportation Systems Center in determining the applicability of safety and damageability standards to electric and hybrid vehicles. This has included cooperation in conducting tests and obtaining and evaluating vehicle data and in reviewing contractor draft recommendations.

C. THE PROPOSED PERFORMANCE STANDARDS

The performance standards proposed today, as required, by section 7(b)(2) of the Act, represent the minimum level of performance which is required for vehicles to be considered for use in the electric and hybrid vehicle demonstrations. These initial standards have been set at the levels which DOE has determined are necessary to promote the acquisition and use of such vehicles for transportation purposes within the capability (determined by DOE) of electric and hybrid vehicles. Section 7(b)(3) requires DOE to revise these standards periodically as the state-of-the-art improves, and

not later than six months prior to the date for contracts for the purchase of advanced electric or hybrid vehicles.

The performance standards only specify minimum levels of performance, and these minimum standards do not represent the sole basis for acceptability of vehicles for demonstration. DOE, as part of its solicitation and selection process, may specify varying priorities for increased performance levels and additional considerations within and among the designated categories in order to provide a broad spectrum of vehicles that best meet the needs of the program. Those vehicles meeting the minimum performance standards will be eligible to be considered for selection using evaluation criteria which may include consumer/user needs and preferences, reliability, durability, maintainability, safety, passenger and cargo capacity, energy use, noise, costs, warranties, and other qualitative factors which will provide the project to the extent practicable, pursuant to section 7(c)(1) of the Act, with demonstration vehicles which represent a cross-section of the available technologies and types of uses. DOE has adopted the recommendations of DOT (in its report on its study of the applicability of safety standards and regulations to electric and hybrid vehicles pursuant to section 13(d) of the Act) and DOE's contractors that electric and hybrid vehicles comply with all applicable Federal regulations for safety, crashworthiness, damageability, crash avoidance and hazards. In addition, DOE accepted the recommendation of certain additions to these requirements. It is also proposed that vehicle emissions levels comply with Federal regulations.

Other proposed minimum performance standards are substantially less than the performance capabilities of conventional vehicles and represent compromises between user needs, the capabilities of existing vehicles, projected capabilities of near-term future vehicles, benefits and costs. Proposed minimum dynamic performance requirements such as acceleration, gradeability and top speed are quite low in order to permit latitude in achieving higher range and lower overall vehicle costs. Proposed minimum ranges for the electric vehicles are quite low in general agreement with contractor recommendations to permit tradeoffs, particularly with respect to costs for those missions having low range demand. The proposed minimum hybrid vehicle range is greater than that of the electric vehicle since the use of non-electrical propulsion energy should permit substantially increased range. An upper limit of non-electrical propulsion energy is proposed for hybrid vehicles to insure that there is at least some minimum substitution of electric energy for petroleum. The

proposed upper limit on non-electrical energy which can be used by a hybrid vehicle was derived by considering the fuel consumption characteristics of heat engine propulsion systems and the substitution capability of stored electrical energy. The amount of substitution beyond the minimum may receive further consideration in selecting vehicles for demonstration. Proposed recharge time and recharge control reflects the minimum judged to be consistent with daily vehicle use.

Proposed battery life minimum levels were selected in general agreement with contractor recommendations and what was judged to be achievable with available technology. Considerable improvement above the minimum values are desired. A passenger heater was judged to be required to be available as an option with the adequacy of such a heater to be considered in final vehicle selection. An odometer and state-of-charge meter were judged to be necessary for reasonable vehicle use.

Vehicle capacity, costs and electric energy use standards are not proposed due to the wide variability among vehicles and vehicle missions. Setting minimum standards which would represent true limiting values for the wide spectrum of vehicles and missions was judged to be counterproductive to bringing forth the best capability for each particular application. Therefore, capacity, costs, electric energy consumption and other performance characteristics for which no minimum level has been proposed will be evaluated, if at all, on a comparative basis in the selection of demonstration vehicles from among those meeting the minimum performance standards.

The proposed regulation establishes Electric Vehicle Test Procedure—SAE J227a as the applicable test conditions and procedures for determining the levels of performance for those categories for which performance standards have been set. This is an SAE recommended practice establishing uniform conditions and procedures for testing electric battery powered vehicles which are capable of being operated on public and private roads, and it is proposed for use with the standards since it is regarded as the most appropriate test procedure which is publicly available and in use and which will permit cross-comparisons on a common basis.

The standards involve the use of SAE J227a test procedure and terminology with respect to acceleration, gradeability at speed, gradeability limit, range and energy, and indirectly for other standards through definitions standardizing methods of obtaining a set battery condition (such as 80 percent discharged specified in the standard on recharge time and battery life). A copy of SAE J227a is included

as an appendix to the SAE report on recommended standards mentioned above.

D. PUBLIC HEARING AND WRITTEN COMMENT PROCEDURES

1. *Written Comments.* Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposed performance standards. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Electric and Hybrid Vehicle—Proposed Performance Standards." Fifteen copies should be submitted. All comments received by March 17, 1978, before 4:30 p.m., e.d.t., and all other relevant information, will be considered by DOE before final action is taken on the proposed regulations.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

2. *Public Hearing.*—(a) *Request procedures.* The time and place of the public hearing are indicated in the dates and address sections of this preamble. The hearing will be continued, if necessary, on March 10, 1978.

DOE invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the address section of this preamble and must be received before 4:30 p.m. on February 27, 1978. Such a request may be hand delivered to such address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Electric and Hybrid Vehicles—Proposed Performance Standards."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted through the day before the hearing.

DOE will notify, before 4:30 p.m., e.d.t., March 1, 1978, each person selected to appear at the hearing. Each person selected to be heard must submit 50 copies of her or his statement to the address and by the date

given in the addresses and dates section of this preamble.

b. *Conduct of Hearings.* DOE reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m., e.d.t., February 27, 1978. DOE will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter. Also available for inspection at the DOE Freedom of Information Office are the NASA, ADL, GRC and SAE reports. A copy of these reports may be obtained from the Office of Electric and Hybrid Vehicle Systems, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. 20545. Additional copies of these reports may be obtained from the National Technical Information Service, U.S. Depart-

ment of Commerce, 5282 Port Royal Road, Springfield, Va. 22121.

E. ENVIRONMENTAL AND INFLATIONARY REVIEW

In compliance with the National Environmental Policy Act of 1969 (NEPA), DOE has prepared a draft Environmental Development Plan (EDP) that identifies the potential environmental, ecological, social/economic, health, safety, and natural resource issues associated with the entire electric and hybrid vehicle project. Information contained within the EDP provides a status of the potential environmental problems and outlines in detail a plan for resolving these problems. As an environmental planning document, the EDP sets forth a schedule for responding to NEPA compliance. The first milestone on the schedule calls for the preparation of an environmental impact assessment (EIA). The EIA will identify all environmental impacts (physical environment, ecological, socioeconomic, health, safety, and resource) resulting directly and indirectly from the project. It will also identify the state of knowledge about the severity of the impacts and estimate the time and amount of research necessary to characterize the impacts. The EIA is scheduled to be completed in late 1979.

The proposed rule has been reviewed in accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular No. A-107 and has been determined not to be a major proposal requiring evaluation of its economic impact as provided for therein.

(Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, Pub. L. 94-413; Energy Reorganization Act of 1974, Pub. L. 93-438; Department of Energy Organization Act, Pub. L. 95-91.)

In consideration of the foregoing, it is proposed to amend Chapter X of Title 10, Code of Federal Regulations, by establishing Part 1010, as set forth below.

Issued in Washington, D.C., February 6, 1978.

WILLIAM P. DAVIS,
Deputy Director
of Administration.

Chapter X of Title 10, Code of Federal Regulations, is amended by establishing Part 1010 as follows:

Subpart A—General Provisions

§ 1010.1 Purpose and scope.

This part contains performance standards for electric and hybrid vehicles required to be prescribed by the Department of Energy pursuant to section 7(b)(1) of the Act.

§ 1010.2 Definitions.

As used in this part—

"Act means the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 (Pub. L. 94-413, 90 Stat. 1263 et seq.).

"Commercial vehicle" means a vehicle other than a personal use vehicle.

"Electric vehicle" means a vehicle which is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a non-electrical source of power designed to charge batteries and components thereof.

"Hybrid vehicle" means a vehicle propelled by a combination of an electric motor and an internal combustion engine or other power source and components thereof.

"Personal use vehicle" means a vehicle designed to carry ten persons or less and which is designed and primarily used for transporting the vehicle operator and passengers.

"Vehicle" means an electric or hybrid vehicle.

"Vital accessories" means headlights, taillights, windshield wipers, windshield defroster, defroster blowers, and heater blowers.

§ 1010.3 Test conditions and procedures.

The conditions and procedures in Electric Vehicle Test Procedure—SAE J227a, as revised February 1976, of the Society of Automotive Engineers, shall be used to determine the levels of performance of vehicles for those categories for which minimum levels of performance are prescribed in Subpart B.

§ 1010.4 Units.

The units and unit symbols and abbreviations used in this part are those of the International System of Units (Système International) or SI as established by the General Conference of Weights and Measures in 1960 and interpreted and modified for the United States pursuant to the U.S. Department of Commerce notice on the Interpretation and Modification of the International System of Units for the United States (41 FR 54018, December 10, 1976).

Subpart B—Minimum Levels of Performance

§ 1010.10 Minimum levels of performance for personal use vehicles.

The following minimum levels of performance are required with respect to any personal use vehicles purchased or leased pursuant to section 7(c) of the Act.

(a) Acceleration. The time required to accelerate from rest to 50 km/h shall not exceed 12s.

(b) Gradeability at speed. The grade which can be traversed up at 25 km/h shall be at least 15 percent.

(c) Gradeability limit. The grade on which the vehicle can start and climb for 20s either backward or forward shall be no less than 20 percent.

(d) Forward speed capability. The speed which can be maintained for five minutes shall be 88 km/h.

(e) Range. The distance which the vehicle can be operated with vital accessories on or equivalent shall be:

(1) For an electric vehicle, at least 50 km on the SAE J227a/C cycle, and

(2) For a hybrid vehicle, at least 200 km on the SAE J227a/C cycle.

(f) Battery recharge time. The battery shall be capable of being fully recharged from 80 percent discharge in 10h or less from 110V or 220V AC by use of an on-board charger.

(g) Recharge control. The vehicle shall have a recharge control which is adequate to meet the requirements of energy, life, maintenance and safety.

(h) Energy consumption. (1) For an electric vehicle, the maximum amount of non-electrical energy consumed shall be that used for operation of the accessories only.

(2) For a hybrid vehicle, non-electrical energy consumed shall not exceed 1.3 MJ/km and shall also not exceed 75 percent of total energy consumed for propulsion and vital accessories, based on being fully loaded on a driving schedule of 33 km on SAE J227a/C cycle plus 33 km at 75 km/h (higher heating value of gasoline taken as 32.7 MJ/L) and with vital accessories on.

(i) Battery life. The vehicle shall be capable of 75 percent of its required range with the battery fully charged and 100 percent of its required acceleration and grade capabilities with the battery from fully charged to 80 percent discharged after 15,000 km or 12 months of normal use.

(j) State-of-charge meter. The vehicle shall have a state-of-charge meter for the propulsion battery system.

(k) Odometer. The vehicle shall have an odometer.

(l) Passenger comfort heater. The vehicle shall have a passenger comfort heater available as an option.

(m) Documentation. Adequate user manuals, maintenance (service) manuals and parts lists shall be provided.

(n) Emissions. The vehicle shall comply with all applicable Federal emissions regulations for motor vehicles.

(o) Safety, crashworthiness, damageability, crash avoidance and hazards.

(1) The vehicle shall comply with all applicable Federal regulations for motor vehicles concerning safety, crashworthiness, damageability, crash avoidance and hazards, unless a waiver or modification is obtained from the Department of Transportation.

(2) Until the Department of Transportation issues regulations which cover the same subjects, the vehicle shall also have the following performance characteristics.

(i) The electric propulsion circuit shall be electrically isolated from other conductive portions of the vehicle.

(ii) The vehicle shall be capable of undergoing the test procedure of Federal Motor Vehicle Safety Standard 208 and 301 with all battery materials remaining outside the passenger compartment.

(iii) The vehicle's battery caps shall be of the "explosive proof" type.

(iv) Ventilation shall be adequate within the battery compartment to maintain the concentration of hydrogen below 4% by volume during vehicle operation (including charging and system malfunctions).

(v) The vehicle shall have a device which provides for the positive disconnection of the battery and which is operable from the normal operator position.

(vi) The vehicle shall not be damaged or present a hazard due to being parked for up to 8 hours or operated in normal weather and temperatures within -25°C to 50°C.

§ 1010.11 Minimum levels of performance for commercial vehicles.

The following minimum levels of performance are required with respect to any commercial vehicles purchased or leased pursuant to section 7(c) of the Act.

(a) Acceleration. The time required to accelerate from rest to 50 km/h shall not exceed 15s.

(b) Gradeability at speed. The grade which can be traversed up at 25 km/h shall be at least 15%.

(c) Gradeability limit. The grade on which the vehicle can start and climb for 20s either backward or forward shall be no less than 20%.

(d) Forward speed capability. The speed which can be maintained for five minutes shall be 75 km/h.

(e) Range. The distance which the vehicle can be operated with vital accessories on or equivalent shall be—

(1) For an electric vehicle, at least 50 km on the SAE J227 a/B cycle, and

(2) For a hybrid vehicle, at least 200 km on the SAE J227 a/B cycle.

(f) Battery recharge time. The battery shall be capable of being fully recharged from 80 percent discharge in 10h or less.

(g) Recharge control. The vehicle shall have a recharge control which is adequate to meet the requirements of energy, life, maintenance and safety.

(h) Energy consumption. (1) For an electric vehicle, the maximum amount of non-electrical energy consumed shall be that used for operation of the accessories only.

(2) For a hybrid vehicle, non-electrical energy consumed shall not exceed 9.8 kJ/kmkg of cargo and shall also not exceed 75% of total energy consumed for propulsion and vital accessories, based on being fully loaded on a driving schedule of 100 km on SAE J227 a/B cycle, the cargo not including the operator, and with vital accessories on.

(i) Battery life. The vehicle shall be capable of 75% of its required range with the battery fully charged and 100% of its required acceleration and grade capabilities with the battery from fully charged to 80% discharged after 15,000 km or 12 months of normal use.

(j) State-of-charge meter. The vehicle shall have a state-of-charge meter for the propulsion battery system.

(k) Odometer. The vehicle shall have an odometer.

(l) Passenger comfort heater. The vehicle shall have a passenger comfort heater available as an option.

(m) Documentation. Adequate user manuals, maintenance (service) manuals and parts lists shall be provided.

(n) Emissions. The vehicle shall comply with all applicable Federal emissions regulations for motor vehicles.

(o) Safety, crashworthiness, damageability, crash avoidance and hazards.

(1) The vehicle shall comply with all applicable Federal regulations for motor vehicles concerning safety, crashworthiness, damageability, crash avoidance and hazards, unless a waiver or modification is obtained from the Department of Transportation.

(2) Until the Department of Transportation issues regulations which cover the same subjects, the vehicle shall also have the following performance characteristics.

(i) The electric propulsion circuit shall be electrically isolated from other conductive portions of the vehicle.

(ii) The vehicle shall be capable of undergoing the test procedure of Federal Motor Vehicle Safety Standards 208 and 301 with all battery materials remaining outside the passenger compartment.

(iii) The vehicle's battery caps shall be of the "explosive proof" type.

(iv) Ventilation shall be adequate within the battery compartment to maintain the concentration of hydrogen below 4% by volume during vehicle operation (including charging and system malfunctions).

(v) The vehicle shall have a device which provides for the positive disconnection of the battery and which is operable from the normal operator position.

(vi) The vehicle shall not be damaged or present a hazard due to being parked for up to 8 hours or operated in normal weather and temperatures within -25°C. to 50° C.

[FR Doc. 78-3806 Filed 2-9-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business for Purpose of SBA Loans for Radio and Television Broadcasting

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to set a size standard for small radio and television broadcasting firms to receive Small Business Administration financial assistance. This rule is necessary because there currently is no size standard for these industries. It is intended to result in the establishment of eligibility criteria for small radio and TV firms for SBA assistance.

COMMENT DATE: Comments must be received by March 13, 1978.

ADDRESS COMMENTS TO: Director, Size Standards Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Harvey D. Bronstein, 202-653-6373.

SUPPLEMENTARY INFORMATION: In the past, the Small Business Administration did not make loans to firms engaged in the dissemination of ideas. The purpose of this policy was to avoid giving the appearance of Government influence on the exercise of freedom of speech.

On November 10 and 25, 1977, the SBA published in the FEDERAL REGISTER a proposed rule to make financial assistance available to purchase existing, or to construct new, radio and television broadcasting firms. The proposal was motivated by a desire to help "small business concerns owned and controlled by socially or economically disadvantaged persons," although assistance would not be limited to such firms. This proposal was adopted as a final rule on January 19, 1978.

Analysis of these two industries reveals a concentrated market structure with the top 1 percent of radio firms controlling 68 percent of sales and the top 1 percent of TV firms controlling 66 percent of that industry's sales. The 1976 average firm size in radio was \$1 million annual sales and in TV, \$8.4 million. Combined revenues for the radio and TV industries in 1976 were \$7 billion.

In establishing a size standard for financial assistance, we considered the profitability of the industries. Rate of return on sales before taxes in 1976 was 7 percent for radio and 25 percent for the TV industry. These factors are

important because they indicate investment attractiveness, an important consideration in providing financial assistance.

We estimate that a size standard of \$2 million annual revenues will include 95 percent of radio and 63 percent of TV firms; a \$5 million standard will include 99 percent of radio and 85 percent of TV firms. For the reasons of market structure and rate of return, we propose a \$2 million size standard for radio and a \$5 million standard for TV broadcasting firms.

This proposal would be implemented by amending Part 121 of Chapter I, Title 13, of the Code of Federal Regulations by:

Revising § 121.3-10 by adding a new paragraph (1) to read as follows:

§ 121.3-10 Definition of small business for SBA loans.

(1) *Communications.* (1) Any firm primarily engaged in radio broadcasting is small if its annual receipts do not exceed \$2 million.

(2) Any firm primarily engaged in television broadcasting is small if its annual receipts do not exceed \$5 million.

Dated: February 2, 1978.

PATRICIA M. CLOHERTY,
Deputy Administrator.

[FR Doc. 78-3788 Filed 2-9-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 742 3130]

INSILCO CORP. ET AL.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent order, among other things, would require a Meriden, Conn., distributor of pre-cut housing products and its subsidiary to cease misrepresenting or failing to make relevant disclosures with regard to product assembly, delivery costs, legal building requirements, need for skilled building tradesmen, mortgage liens, and cancellation rights—in Spanish, if applicable. The order further requires the firm to acknowledge and resolve complaints in a prescribed manner. Additionally, the firm must cease failing to provide consumers, in

connection with the extension of credit, such material disclosures as required by Federal Reserve Board regulations.

DATE: Comments must be received on or before April 10, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul Turley, Director, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, Ill. 60603, 312-353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the FTC Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 742 3130]

INSILCO CORP., AND MILES HOMES, INC.
AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Insilco Corp., a corporation, and Miles Homes, Inc., a corporation, and it now appearing that said corporations, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Insilco Corp. and Miles Homes, Inc., by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Insilco Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1000 Research Parkway, Meriden, Conn.

Proposed respondent Insilco Corp. has numerous wholly-owned subsidiaries in various states of the United States which it collectively terms "Miles Homes Companies" and which includes, among others, Miles Homes, Inc.

Proposed respondent Miles Homes, Inc. is a wholly-owned subsidiary of respondent Insilco Corp., and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 4500 Lyndale Avenue, North, Minneapolis, Minn.

Proposed respondent Insilco Corp. by reason of its ownership of Miles Homes, Inc. has the power to and does control the acts and practices of Miles Homes, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respon-

dents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

Definitions

For purposes of this order, the following definitions shall apply:

(a) The term "pre-cut housing" means homes sold to the general public by any of the Miles Homes Companies in the form of unassembled or partially assembled materials and components other than a package.

(b) The term "package" means the materials and components for the plumbing, electrical or heating systems, kitchen cabinets not included with pre-cut housing, or tile or paint which any of the Miles Homes companies offers to purchasers of pre-cut housing.

(c) The term "legal holiday" means any one of the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day.

(d) The term "receipt" means three days following the date post-marked on written requests from purchasers provided that respondents are not precluded from establishing by other means the actual date of receipt of any written or oral request.

(e) The term "business days" means the days of the week that respondent Miles Homes, Inc. customarily conducts its business.

II

It is ordered, That respondents Insilco Corp., a corporation, and Miles Homes, Inc., a corporation, and respondents' successors and assigns, and their officers, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale or delivery of pre-cut housing, packages,

homes or housing, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by any means that:

(a) The only skill required for the assembly of respondents' pre-cut housing or packages is the ability to drive a nail or use a hammer, or that respondents' pre-cut housing or packages can be assembled by everyone without any construction skills or experience.

(b) Pre-cut housing or packages sold by respondents can in all cases be completely assembled without utilizing the services of a mason, carpenter, plumber, electrician or any other skilled building tradesman or other person experienced in building construction.

(c) Instructions furnished to purchasers for the assembly of respondents' pre-cut housing or packages are simple and are easily followed in all cases without any assistance from persons experienced in the building construction trades.

(d) No additional charge is made to purchasers for packages or other optional materials or components.

(e) All deliveries of materials and components for pre-cut housing or packages purchased from respondents are made without charge to purchasers.

2. Using the term "precision-cut" or any other words or terms of similar import or meaning which represents, directly or by implication, that materials or components for pre-cut housing or packages are delivered to purchasers accurately cut to size and fit when such materials or components require measuring and cutting after delivery to purchasers for assembly or installation in pre-cut housing purchased from respondents.

III

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale or delivery of pre-cut housing, packages, homes or housing, shall include in all catalogues furnished to prospective purchasers, and shall furnish to each purchaser prior to the time such purchaser enters into any initial binding agreement for the purchase of respondents' pre-cut housing, a written statement that will set forth the following disclosures in a clear and conspicuous manner:

1. That purchasers who do not possess building construction skills or experience may find it necessary to hire or to otherwise secure the assistance of persons experienced in the building construction trades, such as a mason to lay the foundation, a carpenter to measure and cut materials and components to size for the house plan, a plumber to assemble and install plumbing and heating systems, and an

electrician to install the electrical system, and that in some localities certain of such work is required by law to be performed by licensed tradesmen;

2. That purchasers who do not possess building construction skills or experience may find it necessary to hire or to otherwise secure the assistance of persons experienced in building construction to explain or interpret the instructions furnished by respondents;

3. That the land upon which respondents' pre-cut housing is to be built will be subject to a mortgage lien as security for a note in an amount that will cover all purchases made from respondents, and that respondents may require that the purchaser furnish respondents with a copy of the deed showing ownership of such land;

4. That in those instances where the purchaser has not completed payment for the land upon which the pre-cut housing is to be built, respondents may require a copy of the contract evidencing sale of the land to the purchaser of such pre-cut housing and a permission-to-build agreement from the seller of the land;

5. That purchasers will be charged an additional amount for packages or other optional materials or components ordered when such are not included in the original purchase price;

6. That only specified deliveries will be made without charge to each purchaser and that other delivery charges which will vary depending on the number of orders a purchaser places, the quantity of materials purchased, the location of the shipper, and the method of shipment will be added to each purchaser's total indebtedness to respondents;

7. That respondents do not arrange long-term financing for individual purchasers from institutions that customarily furnish mortgage loans;

8. That the monthly payments made by purchasers to respondents will be, for the most part, in payment of the interest on the total amount financed with little, or no reduction in the total amount financed;

9. That materials or components delivered to purchasers should be inventoried and, in some cases must be sorted, after unloading;

10. That procedures, which respondents shall specifically identify and describe, have been established for the informal settlement of complaints and disputes concerning the shortage, omission or replacement of any material or component, and that purchasers will not be charged any fee by respondents for use of these procedures.

IV

It is further ordered, That respondents, in connection with the sale of pre-cut housing shall, at the time a purchaser enters into any initial con-

tract or agreement for the purchase of such housing from respondents, inform each such purchaser orally of his right to cancel such contract or agreement and shall furnish to each such purchaser:

1. A fully completed copy of such purchase agreement or contract which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the purchaser and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day, excluding Sundays and legal holidays, after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

2. A completed form in duplicate, captioned "Notice of Cancellation" attached to the purchase agreement or contract and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

Date _____ (enter date of transaction).

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to _____ (Name of Seller), at _____ (Address of seller's place of business) not later than midnight of _____ (Date). I hereby cancel this transaction.

Date: _____

(Buyer's Signature)

3. The requirements set out in subparagraphs 1 and 2 above, do not

apply in any case in which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto.

V

It is further ordered, That respondents, in connection with the sale or delivery of pre-cut housing, packages, homes or housing shall:

1. Upon the receipt of a purchaser's written request for delivery of materials or components, acknowledge each such request within ten (10) business days and notify the purchaser in writing within thirty (30) days of the receipt of such request of the date on which such delivery will be scheduled; *Provided*: That, if a purchaser has not furnished respondents with satisfactory documentary evidence that all conditions precedent to such purchaser's contractual right to the requested delivery have been fulfilled and that the construction of such purchaser's house has progressed to the point where delivery of the requested materials or components is appropriate, then respondents need not arrange for the requested delivery but must advise such purchasers, within thirty (30) days of the receipt of the request, of the reason or reasons why the request for delivery will not be honored;

2. Schedule the delivery date referred to in subparagraph 1 above for a date within ten (10) business days of the date requested by the purchaser; *Provided*: That, if the requested delivery date is less than thirty (30) days from the date of receipt by respondents of the request for delivery, then respondents shall schedule delivery for a reasonable time thereafter;

3. Notify each purchaser at the time the initial purchase contract is made where purchasers are directed to address inquiries or complaints concerning:

(a) The purchaser's contractual agreement with respondents,

(b) The delivery of materials or components,

(c) Shortages, omissions, or replacement of materials or components, and

(d) The construction, assembly, and installation of pre-cut housing or packages.

4. Furnish to each purchaser a reasonable number of pre-addressed post cards for the purpose of submitting the inquiries or complaints referred to in subparagraph 3 above;

5. Acknowledge receipt of each written inquiry or complaint received from purchasers within ten (10) business days, and notify each such purchaser in such acknowledgment of the approximate date on which response to the inquiry or complaint will be furnished; such response shall be in writing and no later than thirty (30) days

from the date of the receipt of the inquiry or complaint;

6. Make a disposition relating to the purchaser's inquiry or complaint on or before the expiration of the thirty (30) day period referred to in subparagraph 5 above. Respondents' response to an inquiry or complaint relating to the shortage, omission or replacement of any material of component shall state:

(a) Whether or not respondents will furnish such material or component,

(b) The date on which delivery of the requested material or component will be scheduled, which date shall not be unreasonably distant in the future, and

(c) The reason or reasons why respondents will not furnish the requested material or component, if such be the case.

Provided, That this subparagraph 6 shall not be construed to preclude respondents from furnishing any purchaser with a credit for the purchase price and delivery charges of any material or component or from taking other remedial action with respect to any material or component.

7. Designate a single focal point within the operations of the Miles Homes Companies for the receipt of complaints which have not been resolved to the satisfaction of any purchaser under the procedures set out in subparagraphs 3, 4, 5, and 6 above, and notify each such purchaser at the time the response is made under subparagraph 6 above of the focal point and individual to whom such disputed complaints are to be directed;

8. Acknowledge, in writing, each complaint received pursuant to subparagraph 7 above within ten (10) business days of the date such complaint was received and within thirty (30) days of receipt of such complaint notify the purchaser in writing of the disposition made with respect to such dispute;

9. Establish a procedure whereby disputes with purchasers concerning the shortage, omission, or replacement of any material or component which cannot be resolved on a mutually agreeable basis within forty (40) business days after the receipt of a complaint from a purchaser under the procedures described in subparagraph 7 and 8 above, are promptly referred to and reviewed by an officer of Insilco Corp. Such officer shall be an officer who is not responsible for the day-to-day operation of Miles Homes, Inc., or for the day-to-day operation of any of the Miles Homes Companies; fairly and expeditiously settle each dispute no later than thirty (30) business days from the date the dispute is received by the officer; and, notify the purchaser promptly, and in writing, of the disposition of the dispute.

10. Specifically perform without unreasonable delay and in good faith in

each instance where a complaint or dispute is resolved in favor of a purchaser through the procedures in Part V of the Order;

11. Use good faith efforts to meet each and every delivery date scheduled under Part V of the Order, *Provided*: That, in the event respondents are unable to make such deliveries as required due to intervening circumstances beyond their control such as labor strike, supplier failure to deliver, or unsuitable weather conditions, then respondents' obligation to deliver shall be suspended for the duration of such intervening circumstance and purchasers shall be notified in writing of the reason or reasons why delivery will be delayed.

Provided, however, In the event respondents adopt open-end credit plans under § 226.7 of Regulation Z, respondents may petition the Commission to modify Part V of this Order to make the time periods consistent with the time periods required under §§ 226.7 and 226.14 of Regulation Z (12 CFR Part 226).

VI

It is ordered, That respondents Insilco Corp., a corporation, and Miles Homes, Inc., a corporation, and respondents' successors, assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any extension of or arrangement for consumer credit, or any advertisement to aid, promote, or assist, directly or indirectly any extension of or arrangement for consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act 15 U.S.C. 1601-65 (1970) as amended 15 U.S.C. 1601-65(a) (Supp. IV) 1974, do forthwith cease and desist from:

1. Failing in any consumer credit transaction to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price", as required by § 226.8(c)(1) of Regulation Z.

2. Failing to disclose the amount of any downpayment in money made in connection with any consumer credit transaction and to describe that amount as the "cash downpayment", as required by § 226.8(c)(2) of Regulation Z.

3. Failing to disclose the "unpaid balance of cash price" to describe the difference between the "cash price" and the "cash downpayment", as required by § 226.8(c)(3) of Regulation Z.

4. Failing to disclose the "unpaid balance" to describe the sum of the "unpaid balance of cash price" and all

other charges included in the amount financed but which are not part of the finance charge, as required by § 226.8(c)(5) of Regulation Z.

5. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed", as required by § 226.8(c)(7) of Regulation Z.

6. Failing to disclose the sum of all charges made to the customer which are required by § 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge", as required by § 226.8(c)(8)(i) of Regulation Z.

7. Failing to disclose accurately the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price" as required by § 226.8(c)(ii) of Regulation Z.

8. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with § 226.5 of Regulation Z, as required by § 226.8(b)(2) of Regulation Z.

9. Failing to disclose the number, amount, and due dates or period of payments scheduled to repay the indebtedness, as required by § 226.8(b)(3) of Regulation Z.

10. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum of the "total payments" as required by § 226.8(b)(3) of Regulation Z.

11. Stating, utilizing, or placing any information or explanation not required or authorized by Regulation Z in a manner which might tend to mislead or confuse the customer or contradict, obscure, or detract attention from the information required by Regulation Z to be disclosed, as required by § 226.6(c) of Regulation Z.

12. Failing to give notice to each customer of the right to rescind the credit transaction by furnishing the customer with two copies of the "Notice to customers required by Federal law", set forth in § 226.9(b) of Regulation Z, as required by § 226.9(b) of Regulation Z, and in the required type size set out in § 226.9(b) of Regulation Z.

13. Failing to delay the making of deliveries to the residence of the customer until after the rescission period has expired, as required by § 226.9(c)(4) of Regulation Z.

14. Failing to provide customers with two copies of the "effect of rescission", set forth in § 226.9(d) of Regulation Z, in the manner and form prescribed by § 226.9(b) of Regulation Z.

15. Failing to furnish customers with disclosures prescribed by § 226.8 of Regulation Z at the time and in the manner and form required by that section.

16. Failing to furnish customers with a duplicate of the instrument or a statement by which the disclosures prescribed by § 226.8 of Regulation Z are made, and on which the creditor is identified, as required by § 226.8(a) of Regulation Z.

17. Failing to disclose a description or identification of the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by § 226.8(b)(5) of Regulation Z.

18. Representing in any advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any installment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under § 226.8 of Regulation Z, as required by § 226.10(d)(2) of Regulation Z:

- (a) The cash price;
- (b) The amount of the downpayment required or that no downpayment is required, as applicable;
- (c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) The amount of the finance charge expressed as an equal percentage rate; and
- (e) The deferred payment price if applicable.

Provided: That, respondents may make disclosures for open-end credit under § 226.7 of Regulation Z without regard to any provisions required under § 226.8 above of Regulation Z.

19. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with § 226.4 and § 226.5 of Regulation Z at the time and in the manner, form, and amount required by § 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

VII

It is further ordered, That respondents in connection with the sale or delivery of pre-cut housing, packages, homes, or housing shall:

1. Furnish each purchaser of respondents' pre-cut housing or packages with an itemized statement of account at least once every six months which sets forth to such date all purchases, credits, payments credited to interest, payments credited to principal, and current balance owed to respondents.

2. Secure from each purchaser of respondents' pre-cut housing a written acknowledgment which shall state the following information:

(a) That the disclosures referred to in Part III of this Order were received.

(b) The date on which the disclosures referred to in Part III of this Order were received.

3. Notify each existing and future purchaser of respondents' obligations under Part V of this Order.

VIII

It is further ordered, That respondents shall maintain and, upon reasonable notice, provide access to the Commission or its representatives for the purpose of inspection and copying, for a period of three years from the date each complaint is received.

1. All complaints made to respondents by purchasers concerning the shortage, omission, replacement or delivery of materials, components and packages.

2. All correspondence and documents regarding complaints, and disputes made by purchasers concerning the shortage, omission, replacement or delivery of materials, components and packages, including all records concerning the disposition of such complaints and disputes.

IX

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, order, regulations, or building codes or directives of any kind issued or required by any governmental agency, or any other state or local laws, or act as a defense to actions instituted by municipal or state regulatory agencies, or be construed as a waiver of legal rights either party may have which vary from state to state.

It is further ordered, That respondents shall within thirty (30) days of the effective date of this Order distribute a copy of the Order to:

1. Each of respondents' operating divisions and subsidiaries engaged in the advertising, offering for sale, sale or delivery of pre-cut housing, packages, homes or housing.

2. All personnel of the respondent corporations and of the operating divisions and subsidiaries of all of respondents' corporations who are engaged or who may hereafter become engaged in the consummation of any extension of consumer credit, and in the advertising, offering for sale, sale or delivery of respondents' pre-cut housing, packages, homes, or housing and that in connection with such distribution, respondents shall secure a signed statement from each person acknowledging receipt of a copy of this Order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale result-

ing in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the Order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

INSILCO CORP., AND MILES HOMES, INC.

[File No. 7423130]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Insilco Corporation and its Minnesota subsidiary, Miles Homes, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges the respondents with unfair and deceptive acts and practices relating to representations made in advertising in connection with the sale of pre cut, build-it-yourself houses to the public. Specific allegations of the complaint charge Insilco Corporation of Meriden, Connecticut and its subsidiary Miles Homes, Inc. of Minneapolis, Minnesota with representing, contrary to fact, that: Their pre-cut housing is easy to assemble and can be completely constructed by anyone and without utilizing the services of skilled building tradesmen; the parts are delivered to purchasers pre-cut with such accuracy that they need only to be nailed in place; the instructions furnished are designed for the specific house ordered by each purchaser, and are so simple the can be easily followed by anyone.

The complaint also alleges that deliveries were not timed to meet the construction needs of purchasers; purchasers were not always furnished with an adequate supply of materials; and that purchasers were required to pay certain delivery charges. Further allegations relate to the failure to disclose certain information concerning the financial obligations assumed by purchasers. The complaint also alleges violations of the Truth-in-Lending Act.

The proposed order covers the parent Insilco Corporation and is ap-

pliable to all of Insilco's Miles Homes Companies subsidiaries throughout the United States that are engaged in the sale or delivery of housing. It prohibits the use of the above unfair and deceptive practices and also requires that pre-sale written disclosures be made to purchasers including information that purchasers may find it necessary to secure assistance from persons experienced in the building construction trades, and that some localities by law require licensed tradesmen to perform certain elements of the construction; and that the land upon which the house is to be built will be subject to a mortgage lien as security for a note to cover the purchase of the home.

The proposed order also establishes a specific step-by-step procedure for the handling of purchasers' complaints in a timely manner, and requires that disputed complaints are to be referred to an officer of Insilco Corporation for settlement. Furthermore, the order requires that all purchasers receive a 3-day right of cancellation of their purchase contract. The order also requires the respondents to comply with Truth-in-Lending Act provisions.

It is believed that the provisions of the proposed consent order agreement offer adequate assurance that the respondents will not be able to employ unfair and deceptive practices in the offering or sale of housing. The proposed consent order agreement should also assure that prospective purchasers will have disclosed to them essential information concerning the housing and their financial commitment.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-3760 Filed 2-9-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 101]

[Docket No. 78N-0004]

SACCHARIN

Proposed Rule Making

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the food for human consumption regulations to require that vend-

ing machines that dispense food containing saccharin bear a statement warning prospective purchasers of the risks to health which may be presented by the use of saccharin.

DATES: Comments by March 13, 1978; tentative effective date of a final regulation based on this proposal is 30 days after its date of publication of the final rule in the FEDERAL REGISTER.

ADDRESS: Written comments should be sent, preferably four copies, to the Hearing Clerk (HFC-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Caesar Roy, Bureau of Foods (HFF-310), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-6567.

SUPPLEMENTARY INFORMATION: The Saccharin Study and Labeling Act (SSLA), Pub. L. 95-203, became law on November 23, 1977. Section 4(c) of the SSLA, 21 U.S.C. 343a, authorizes the Commissioner of Food and Drugs to prescribe regulations to require vending machines that dispense food containing saccharin (e.g., diet soft drinks) "to bear a statement of the risks to health which may be presented by the use of saccharin." Section 4(c) of the SSLA also requires that the vending machine warning statement "be located in a conspicuous place on such vending machine and as proximate as possible to the name of each food containing saccharin which is sold through such machine." After a regulation prescribing the vending machine warning statement becomes effective, food containing saccharin sold through a vending machine that does not bear the warning statement would be misbranded under section 403a of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343a).

The Commissioner proposes to establish a new § 101.12 (21 CFR 101.12), which would require that vending machines that dispense food containing saccharin bear a statement warning prospective consumers of the risks to health that may be presented by the use of saccharin. The warning statement on vending machines will ensure that consumers have notice, at the point of sale, of the potential hazards to health presented by the use of saccharin.

Substantial numbers of diet beverages are sold through vending machines. In 1976, \$675 million of soft drinks in cups were sold through vending machines (approximately 3,880 million cups); 8 percent of those beverages were of the diet variety. Moreover, in 1976, 75 percent of the vending machines dispensing soft drinks in

cups contained diet beverages. Even greater quantities of beverages in cans were sold through vending machines. The total dollar value in 1976 was \$1,425 million (approximately 5,165 million cans), 10 percent of which were diet beverages. Ninety percent of vending machines dispensing cans contained diet beverages. Vending machine sales of diet soft drinks clearly constitute a sizable portion of the sales of diet beverages, and consumers who purchase diet beverages from those machines should be apprised of the risks to health that may be presented by the use of saccharin.

The Commissioner proposes to permit the warning statement to be displayed in either of two ways. These alternatives are described below.

ALTERNATIVE I

Each vending machine would bear a warning statement, at least 5 inches wide by 3 inches high, printed in contrasting colors on a durable stick-on label. The label would be conspicuously located on the front of the vending machine so that a person approaching the machine is likely to see the label.

The warning statement, printed in type at least 1/8 inch high, would read as follows: "This machine contains (insert name(s) of food in machine which contains (or contain) saccharin). Use of this product (or these products) may be hazardous to your health. This product (or these products) contains (or contain) saccharin which has been determined to cause cancer in laboratory animals".

ALTERNATIVE II

This alternative involves more than one label on each vending machine. The first label would be conspicuously located on the front of the vending machine, at least 5 inches wide by 3 inches high, printed in contrasting colors on a durable stick-on label. The text, printed in type at least 1/8 inch high, would read: "The products in this machine which contain saccharin may be hazardous to your health. Saccharin has been determined to cause cancer in laboratory animals".

The second label under this alternative would be located as close as possible to the name of the individual products in the machine and would be printed in contrasting colors on a durable stick-on label. Its text, printed in type at least 1/8 inch high, would read: "This product contains saccharin". Comments are solicited on the appropriate size for this label.

Although alternative II involves two or more labels per vending machine, it does have an advantage over the alternative I, because the text of the labels would be uniform. Under the alternative I, the text of the single label would vary depending on the contents of the machine. Since both alterna-

tives would convey essentially the same information to consumers, a preference for either alternative, or any other reasonable one, depends largely on which is easier to implement and less costly for manufacturers.

Comments should address the amount of time needed to implement the vending machine warning requirement. The Commissioner has decided, tentatively, to make a final regulation effective 30 days after its date of publication in the *FEDERAL REGISTER* and to require all vending machines to bear the warning statement within 60 days thereafter.

In addition to the warning statement on the vending machine, individual food products containing saccharin dispensed by the vending machine will be required to bear the saccharin warning label in accordance with the final guidelines published in the *FEDERAL REGISTER*, December 9, 1977 (42 FR 62209).

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 301, 403, and 701(a), 52 Stat. 1042-1043 as amended, 1055, 72 Stat. 1784 as amended (21 U.S.C. 321(s), 331, 343, and 371(a)), and the Saccharin Study and Labeling Act, (sec. 4(c), 91 Stat. 1453 21 U.S.C. 343a), and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 101 of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new § 101.12 to read as follows:

§ 101.12 Saccharin and its salts; vending machine warning statement.

Each vending machine that dispenses food containing saccharin shall bear either the warning statement set forth in paragraph (a) of this section or the warning statements set forth in paragraph (b) of this section.

(a) The following warning statement shall be affixed to the front of each vending machine in a conspicuous location:

This machine contains (insert name(s) of food(s) in machine which contains (or contain) saccharin). Use of this product (or these products) may be hazardous to your health. This product (or these products) contains (or contain) saccharin which has been determined to cause cancer in laboratory animals.

The warning statement shall be printed in type at least $\frac{1}{16}$ inch high in con-

trasting colors on a durable stick-on label at least 5 inches wide by 3 inches high.

(b)(1) The following warning statement shall be affixed to the front of each vending machine in a conspicuous location:

The products in this machine which contain saccharin may be hazardous to your health. Saccharin has been determined to cause cancer in laboratory animals.

The warning statement shall be printed in type at least $\frac{1}{16}$ inch high in contrasting colors on a durable stick-on label at least 5 inches wide by 3 inches high.

(2) The following warning statement shall also be affixed to each vending machine as close as possible to the name of the specific products in the machine which contain saccharin:

This product contains saccharin.

This statement shall be printed in type at least $\frac{1}{16}$ inch high in contrasting colors on a durable stick-on label.

Interested persons may, on or before March 13, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 (as amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: February 6, 1978.

JOSEPH P. HILE,
Associate Commissioner
for Compliance.

[FR Doc. 78-3763 Filed 2-9-78; 8:45 am]

[1505-01]

[21 CFR Part 1040]

[Docket No. 75N-0047]

SUNLAMP PRODUCTS

Performance Standard

Correction

NOTE.—This document originally appeared in the *FEDERAL REGISTER* for Monday, Febru-

ary 6, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See the inside cover of this issue for information about agencies publishing on assigned days of the week.)

In FR Doc. 77-36862 appearing on page 65189 in the issue of Friday, December 30, 1977, the following corrections are made:

On page 65190, in the second column, the 2nd complete paragraph, the 13th line reading " * * * intended for tanning or related effects * * * " should now read " * * * intended solely for the purposes other than * * * "

On page 65191 in the 1st paragraph under "LAMP BASE REQUIREMENT," the third word in the 12th line should read "designed."

On page 65192 the 5th and 6th lines in the 1st paragraph under "USER INSTRUCTION REQUIREMENTS" should read " * * * instructions would include the reproduction of the labels prescribed in § 1040.20 * * * ". In the third column under § 1040.20(c)(5)(i) in the 6th and 8th lines the word "nanometers" should read "nanometers."

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-213-74]

REGULATED INVESTMENT COMPANY STOCK

Custodial Accounts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to custodial accounts for regulated investment company stock. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 and the Tax Reform Act of 1976. The regulations would provide the public with guidance needed to comply with those Acts and would affect public school teachers and employees of certain tax-exempt organizations.

DATE: Written comments and requests for a public hearing must be delivered or mailed by March 27, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-213-74), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

H.B. Hartley of the Legislation and

Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-6624 (not a toll free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 403(b) of the Internal Revenue code of 1954. These amendments are proposed to conform the regulations to section 1022(e) of the Employee Retirement Income Security Act of 1974 (88 Stat. 940) and section 1504(a) of the Tax Reform Act of 1976 (90 Stat. 1378) and are to be issued under the authority contained in section 7805 of the Internal Revenue code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

GENERAL INFORMATION

Under prior law, contributions to a section 403(b) plan (a plan funded by public schools or tax-exempt organizations for teachers or other employees) could be invested only in annuity contracts. In order to provide more flexibility in this area, section 1022(e) provides that these contributions may instead be placed in a custodial account and invested in mutual funds. However, section 1022(e) also makes the custodial account subject to certain requirements of the Code, such as those pertaining to reporting, unrelated business income, and, in many cases, prohibited transactions (see section 503 of the code). In addition, the custodian must be either a bank or another person who has been approved by the Commissioner.

Under the Employee Retirement Income Security Act of 1974, the assets of the custodial account had to be invested in stock of an open-end investment company. Under the Tax Reform Act of 1976, however, the assets may also be invested in stock of a closed-end investment company.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *FEDERAL REGISTER*.

DRAFTING INFORMATION

The principal author of these proposed regulations was H.B. Hartley of

the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.403(b) [Deleted].

PARAGRAPH 1. Section 1.403(b) is deleted.

PAR. 2. Section 1.403(b)-1 is amended by adding a new paragraph (h) at the end thereof to read as follows:

§ 1.403(b)-1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

(h) *Custodial accounts*—(1) *Effective date.* This paragraph applies to contributions made after December 31, 1973.

(2) *Description of custodial account.* A custodial account is described in section 403(b)(7) if all of the following requirements are satisfied:

(i) The custodial account must be established by an employer described in section 403(b)(1)(A) for an employee.

(ii) The employer must make at least one contribution to the custodial account that is excluded from the gross income of the employee under section 403(b).

(iii) The custodian must be a bank or must be a person who has been approved by the Commissioner under § 401-12(n).

(iv) The employee's interest in the custodial account must be nonforfeitable and nontransferable.

(v) There must be a written custodial agreement, and it must be impossible under the agreement for any part of the amounts received by the custodial account or of the earnings thereon to be used for, or diverted to, purposes other than for the exclusive benefit of the employee or his beneficiaries. In particular, the assets held in the account must not be subject to the claims of the employer's creditors.

(vi) The custodial account must be established and maintained primarily to provide for the payment of benefits to the employee over a period of years, usually for life, after retirement. Thus, for example, the custodian must begin to make payments to the employee within a reasonable time after the employee retires. In addition, the custodial agreement must provide that the custodian is not to make any distributions to the employee or his beneficiaries before the employee attains age 65, unless (A) the employee be-

comes disabled or dies, or (B) the employee attains age 55 and leaves the service of the employer.

(vii) Section 401(f)(1) must not apply to the custodial account.

(viii) The custodial agreement must provide that the investment of the funds in the account is to be made solely in stock of one or more regulated investment companies (as defined section 403(b)(7)(C)) to be held in that account. The requirement described in the preceding sentence applies, for example, to amounts paid by the employer and to any earnings on such amounts. The requirement also applies to capital gains realized upon the sale of stock described in this subdivision, to any capital gain dividends received in connection with the stock, and to any refunds described in section 852(b)(3)(D)(ii) (relating to undistributed capital gains of a regulated investment company) that are received in connection with the stock. However, the custodian may deposit funds with a bank, in either a checking or savings account, while awaiting an appropriate time to make additional investments.

(3) *Treatment of custodial account.* Except as provided in section 403(b)(7)(B), a custodial account described in section 403(b)(7) is treated as an annuity contract for all purposes of the Internal Revenue Code.

(4) *Distributions.* (i) Amounts received by or made available to an employee or his beneficiary from a custodial account described in section 403(b)(7) are treated as amounts received or made available under an annuity contract to which section 403(b) applies. (See paragraph (c) of this section.)

(ii) If a custodial account described in section 403(b)(7) purchases a non-transferable annuity contract for an employee and distributes it to the employee and if the contract contains a cash surrender value that may be available to the employee by surrendering the contract, the cash surrender value will not be considered income to the employee unless and until the contract is surrendered. If, however, the contract distributed by the custodial account is a retirement income, endowment, or other life insurance contract, the entire cash value of the contract at the time of distribution must be included in the distributee's income in accordance with the provisions of paragraph (c) of this section, except to the extent that within 60 days after the distribution of the contract, all or any portion of its value is irrevocably converted into a non-transferable contract under which no part of any proceeds payable on death at any time would be excludable under section 101(a) (relating to life insurance proceeds).

(5) *Employee contributions.* An employee is permitted to make contribu-

tions to a custodial account described in section 403(b)(7). The earnings on an employee contribution (like the earnings on any other contribution) are exempt from the income tax. However, an employee contribution is not excluded from gross income and may be subject to an excise tax on excess contributions. See section 4973.

(6) *Excess contributions.* (i) See section 4973 for rules relating to an excise tax on excess contributions.

(ii) The earnings on an excess contribution (like the earnings on any other contribution) are exempt from the income tax.

(iii) If an employer makes an excess contribution to a custodial account described in section 403(b)(7), the contribution is taxed to the employee to the extent provided under section 403(c) as if it were a premium paid for an annuity contract.

(7) *Life insurance.* The custodian of a custodial account described in section 403(b)(7) is permitted to buy life insurance for the protection of the employee. However, unless the insurance contract is distributed within 30 days after it is purchased, the contract must have no cash surrender value, the insurance protection must be merely incidental to other benefits, and the cost of the insurance must be included in the gross income of the employee. For purposes of this subparagraph, life insurance protection is merely incidental if, in each taxable year of the employer, the cost of the insurance does not exceed 25 percent of the employer's contribution to the custodial account.

(8) *Two or more employees.* A custodial account described in section 403(b)(7) may be established and maintained for the benefit of two or more employees. In such a case, the custodian must account separately for the interest of each employee.

(9) *Substitution of custodian.* Anything that has the effect of merely substituting one custodian for another is not considered as terminating or interrupting the existence of a custodial account described in section 403(b)(7).

(10) *Employee power to change investments.* A power authorizing the employee to direct the custodian to change the investment of assets held in the account solely from stock in one regulated investment company to stock in another such company will not be considered to terminate or interrupt the existence of a custodial account described in section 403(b)(7).

(11) *Other requirements.* Under section 403(b)(7)(B), the custodian of a custodial account described in section 403(b)(7) is subject to the same reporting requirements as the trustee of a qualified trust. Thus, for example, the custodian must file the returns described in sections 6033 and 6041. In addition, the custodial account is

treated as an organization described in section 401(a) for purposes of subchapter F of chapter 1 (see especially sections 511 to 515).

(12) *Meaning of terms.* For purposes of this paragraph—

(i) The term "bank" means a bank as defined in section 401(d)(1).

(ii) The term "custodial account" includes a trust,

(iii) The term "custodian" includes a trustee, and

(iv) The term "excess contribution" means an excess contribution as defined in section 4973(c).

(13) *Investment of custodial account funds in section 403(b) annuity contract.* [Reserved]

JEROME KURTZ,
Commissioner of
Internal Revenue.

[FR Doc. 78-3472 Filed 2-6-78; 1:06 pm]

[4830-01]

[26 CFR Parts 1 and 301]

[LR-214-74]

EMPLOYEE RETIREMENT BENEFIT PLANS

Annual Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the filing of annual returns for employee retirement benefit plans. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 ("ERISA"). The regulations would provide the public with the guidance needed to comply with ERISA and would also affect all employers and plan administrators with funded plans of deferred compensation.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 27, 1978. The regulations are generally proposed to be effective for plan years beginning after September 2, 1974.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

William D. Gibbs, of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T; LR-214-74), 202-566-3293 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301) under sections 404, 6033, 6047, 6058 and 6652 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1031 of the Employee Retirement Income Security Act of 1974 (88 Stat. 943) and are to be issued under the authority contained in sections 6058 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 945 and 68A Stat. 917; 26 U.S.C. 6058 and 7805).

REQUIREMENT TO FILE ANNUAL REPORT

Internal Revenue Code section 6058 requires every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation to file an annual return. The proposed regulations provide that the annual return to be filed is the Form 5500 series prescribed by the Internal Revenue Service. The present Form 5500 series also satisfied some of the filing requirements of ERISA for the Department of Labor and the Pension Benefit Guaranty Corporation. It should be pointed out that certain plans may be required to file reports with the Service under these proposed regulations which may not have to be filed under title I of ERISA. It should also be pointed out that although certain plans may not be required to file reports under these proposed regulations, they may, nevertheless, be required to file under title I of ERISA.

PENALTY FOR FAILURE TO FILE

The proposed regulations provide rules relating to the imposition of the penalty under Code section 6652(f) for failure to file the required returns.

OTHER AMENDMENTS AND DELETIONS

Conforming amendments are being made to regulations under Code sections 404, 6033 and 6047. Further, those sections of the regulations which repeat the statute are being deleted.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

DRAFTING INFORMATION

The principal author of these proposed regulations was William D. Gibbs of the Legislator and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 and 26 CFR Part 301 are as follows:

INCOME TAX REGULATIONS

PARAGRAPH 1. Section 1.404 (a)-2A is amended by revising the section title and the first sentence of paragraph (a). As amended, § 1.404 (a)-2A reads as follows:

§ 1.404 (a)-(A) Information to be furnished by employer; taxable years ending on or after December 31, 1971, and before December 31, 1975.

(a) *In general.* For any taxable year ending on or after December 31, 1971, and before December 31, 1975, any employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation shall file the forms prescribed by this section. * * *

§ 1.6033 [Deleted]

PAR. 2. Section 1.6033 is deleted.
PAR. 3. Section 1.6033-2 is amended by revising paragraphs (a) (3) (ii) and (h) (3) to read as follows:

§ 1.6033-2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* * * *
(3) * * *
(ii) For taxable years ending on or after December 31, 1971, and before December 31, 1975, every employee's trust described in section 401 (a) which is exempt from taxation under section 501 (a) shall file an annual return on Form 990-P. The trust shall furnish such information as is required by such form and the instructions issued with respect thereto.

(h) *Records, statements, and other returns of tax-exempt organizations.* * * *

(3) An organization which has established its exemption from taxation under section 301 (a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not

relieved of the duty of filing other returns of information. See, for example, sections 6041, 6043, 6051, 6057, and 6058 and the regulations thereunder.

§ 1.6047 [Deleted]

PAR. 4. Section 1.6047 is deleted.

PAR. 5. Paragraph (c) of § 1.6047-1 is amended to read as follows:

§ 1.6047-1 Information to be furnished with regard to employee retirement plan covering an owner-employee.

(c) *Penalties.* For civil penalty for failure to file a return required by this section, and for criminal penalty for furnishing fraudulent information under this section, see §§ 301.6652-3 and 301.7207-1, respectively.

REGULATIONS ON PROCEDURE AND ADMINISTRATION

PARAGRAPH 6. There is inserted in the appropriate place the following new section:

§ 301.6058-1 Information required in connection with certain plans of deferred compensation.

(a) *Reporting of information—(1) Annual return.* For each funded plan of deferred compensation an annual return must be filed with the Internal Revenue Service. The annual return of the plan is the appropriate Annual Return/Report of Employee Benefit Plan (Form 5500 series) as determined under these forms. The annual period for the annual return of the plan shall be either the plan year or the taxable year of the employer maintaining the plan as determined under these forms. These forms are hereinafter referred to as the "forms prescribed by section 6058(a)."

(2) *Plans subject to requirements.* For purposes of this section, the term "funded plan of deferred compensation" means each pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part 1 of subchapter D of chapter 1. Accordingly, the term includes qualified plans under sections 401(a), 403(a), and 405(a); individual retirement accounts and annuities described in sections 408(a) and 408(b); and custodial accounts under section 403(b)(7). The term also includes funded plans of deferred compensation which are not qualified plans and such plans which are governmental plans, church plans, and plans maintained outside the United States primarily for nonresident aliens (as defined, respectively, in subsection (b)(1), (2), and (4) of section 4 of part 2

of subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 839)). The term does not include annuity contracts described in section 403(b)(1) or individual retirement accounts (an individual participant or surviving beneficiary in such account must file under paragraph (d)(2) of this section) and bonds described in sections 408(c) and 409.

(3) *Required information.* The information required to be furnished on the forms prescribed by section 6058(a) shall include such information concerning the qualification of the plan, the financial condition of the trust, fund, or custodial or fiduciary account which is a part of the plan, and the operation of the plan as shall be required by the forms, accompanying schedules and related instructions applicable to the annual period.

(4) *Time of filing.* The forms prescribed by section 6058(a) shall be filed in the manner and at the time as required by the forms and related instructions applicable to the annual period.

(b) *Who must file—(1) In general.* The annual return required to be filed under section 6058(a) and paragraph (a) of this section for the annual period shall be filed by either the employer maintaining the plan or the plan administrator (as defined in section 414(g)) of the plan for that annual period. Whether the employer or plan administrator files shall be determined under the forms prescribed by section 6058(a) and related instructions applicable to the annual period. Nothing in these forms shall preclude an employer from filing the return on behalf of the plan administrator, or the plan administrator from filing on behalf of the employer.

(2) *Definition of employer.* For purposes of subparagraph (1) of this paragraph, the term "employer" includes a sole proprietor and a partnership.

(c) *Other rules applicable to annual returns—(1) Extensions of time for filing.* For rules relating to the extension of time for filing, see section 6081 and the regulations thereunder and the instructions on the forms prescribed by section 6058(a).

(2) *Amended filing.* Any form prescribed by this section may be filed as an amendment to a form previously filed under this section with respect to the same annual period pursuant to the instructions for such forms.

(3) *Additional information.* In addition to the information otherwise required to be furnished by this section, the district director may require any further information that is considered necessary to determine allowable deductions under section 404, qualification under section 401, or the financial condition and operation of the plan.

(4) *Records.* Records substantiating all data and information required by

this section to be filed must be kept at all times available for inspection by internal revenue officers at the principal office or place of business of the employer or plan administrator.

(5) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in his discretion, relieve an employer, or plan administrator, from reporting information on the forms prescribed by section 6058(a) which is reported on other returns filed with the Service. This discretion includes the ability to relieve an employer, or plan administrator, from filing the applicable form.

(d) *Special rules for individual retirement arrangements—(1) Application.* This paragraph, in lieu of paragraph (a) of this section, applies to an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b), including such accounts and annuities for which a deduction is allowable under section 220 (spousal individual retirement arrangements).

(2) *General rule.* For each taxable year beginning after December 31, 1974, every individual who during such taxable year—

(i) Establishes or maintains an individual retirement account described in section 408(a) (including an individual who is a participant in an individual retirement account described in section 408(c)),

(ii) Purchases or maintains an individual retirement annuity described in section 408(b), or

(iii) Is a surviving beneficiary with respect to an account or annuity referred to in this subparagraph which is in existence during such taxable year, shall file Form 5329 (or any other form designated by the Commissioner for this purpose), as an attachment to or part of the Form 1040 filed by such individual for such taxable year, setting forth in full the information required by that form and the accompanying instructions.

(3) *Special information returns.* If an individual described in subparagraph (2) of this paragraph is not required to file a Form 1040 for such taxable year, such individual shall file a Form 5329 (or any other designated form) with the Internal Revenue Service by the 15th day of the 4th month following the close of such individual's taxable year setting forth in full the information required by that form and the accompanying instructions.

(4) *Relief from filing.* The Commissioner may, in his discretion, relieve an individual from filing the form prescribed by this paragraph.

(5) *Retirement bonds.* An individual who purchases, holds, or maintains a retirement bond described in section 409 may be required to file a return under other provisions of the Code.

(e) *Actuarial statement in case of mergers, etc.* For requirements with re-

spect to the filing of actuarial statements in the case of a merger, consolidation, or transfer of assets or liabilities, see section 6058 (b) and section 414 (1) and the regulations thereunder.

(f) *Effective dates—(1) Section 6058 (a) requirements.* The rules with respect to annual returns required under section 6058 (a) (the rules in this section, other than paragraph (e) thereof) are effective for plan years beginning after September 2, 1974.

(2) *Section 6058 (b) requirements.* The requirements of section 6058 (b) relating to mergers, etc., and paragraph (e) of this section are effective on September 2, 1974, with respect to events described in section 6058 (b) occurring on or after such date.

PAR. 7. Section 301.6652-3 is amended by adding a new paragraph (a) (3) to read as follows:

§ 301.6652-3 Failure to file information with respect to employee retirement benefit plan.

(a) Amount imposed. ***

(3) *Annual return of funded plan of deferred compensation.* Under section 6652 (f) the amount described in this subparagraph is imposed in each case in which there is a failure to file the annual return described in section 6058 (a) on behalf of a plan described in § 301.6058-1 (a) at the time and in the manner prescribed therefor (determined with regard to any extension of time for filing). The employer maintaining the plan is liable for the amount imposed with respect to a failure to so file the annual return in each case in which the employer must file the return under § 301.6058-1 (a). The plan administrator (within the meaning of section 414 (g)) is liable for the amount imposed in each case in which the plan administrator must file the return under § 301.6058-1 (a). In the case of an individual retirement account or annuity described in section 408, the individual described in § 301.6058-1 (d) (2) who must file the annual return under § 301.6058-1 (d) is liable for the amount imposed with respect to a failure to so file the annual return. The amount imposed is \$10 for each day during which the failure to file the annual return on behalf of a plan for a year continues. However, the total amount imposed with respect to a failure to file on behalf of a plan for any year shall not exceed \$5,000

JEROME KURTZ,
Commissioner of
Internal Revenue.

[FR Doc. 78-3473 Filed 2-9-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

[38 CFR Part 3]

VETERANS BENEFITS

Women's Air Forces Service Pilots

AGENCY: Veterans Administration.

ACTION: Proposed Rulemaking.

SUMMARY: The Veterans Administration is amending its regulations to indicate that service in the Women's Air Forces Service Pilots (WASP) during World War II or similar groups, may be considered active service when so certified by the Department of Defense. This change results from enactment of a new law. The effect of this change is to provide authority for granting benefit entitlement to former WASP's.

DATES: Comments must be received on or before March 13, 1978. It is proposed to make this amendment effective November 23, 1977, the date of enactment of the new law (Pub. L. 95-202, 91 Stat. 1449).

ADDRESS: Send written comments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until March 22, 1978.

FOR FURTHER INFORMATION CONTACT:

T. H. Spindle, 202-389-3005

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 22, 1978. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: February 1, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 3.7, paragraph (x) is added to read as follows:

§ 3.7 Persons included.

The following are included:

(x) *Women's Air Forces Service Pilots, or other similarly situated groups.* Service as certified by the Department of Defense. (Pub. L. 95-202, 91 Stat. 1449).

[FR Doc. 78-3764 Filed 2-9-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 162]

[FRL 853-7; OPP-250007]

PESTICIDE PROGRAMS; GUIDELINES FOR REGISTERING PESTICIDES IN THE UNITED STATES

Notification of the Secretary of Agriculture of a Proposed Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of proposed regulation.

SUMMARY: Notice is given as required by section 25(a)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that the Administrator, EPA, has forwarded to the Secretary of the U.S. Department of Agriculture a copy of EPA's proposed regulation to implement section 3(c)(2) of FIFRA, which requires the Administrator to publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide.

FOR FURTHER INFORMATION CONTACT:

William Preston, Criteria and Evaluation Division (WH-568), Office of Pesticide Programs, EPA, Washington, D.C. 20460, 703-557-7351.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture a copy of any proposed regulation at least 60 days prior to signing it for publication in the FEDERAL REGISTER. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall publish in the FEDERAL REGISTER (with the proposed regulation) the comments of the Secretary, and the response thereto of the Administrator. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign such regulation for publication in the FEDERAL REGISTER anytime after such 30-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this proposed regulation has also been forwarded to the Committee

on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate. The section 3(c)(2) proposed regulation was submitted to the FIFRA Scientific Advisory Panel on January 31, 1978, as required by Section 25(d).

(Sec. 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516; 89 Stat. 973; Pub. L. 94-140, 89 Stat. 751 (7 U.S.C. 136 et seq.))

Dated: February 3, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 78-3842 Filed 2-9-78; 8:45]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1100]

[Ex Parte No. 55 (Sub-No. 30)]

PRICE COMPETITION AMONG PRACTITIONERS

Proposed Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rules would amend the Commission's Canons of Ethics to allow price competition among ICC practitioners through the use of advertising. The Commission believes this action would result in reduced fees and lower costs to small carrier applicants and aid those applicants in overcoming the financial advantage possessed by the larger more established carriers. Further, the proposed rules would bring the Commission's regulations into conformance with a recent Supreme Court decision which held that attorney advertising could not be subjected to blanket suppression.

DATES: Written comments should be filed with the Commission by March 27, 1978.

ADDRESS: Send comments to: The Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Richard Armstrong, Policy Review Office, Interstate Commerce Commission, Washington, D.C. 20423, Phone 202-275-1912.

SUPPLEMENTARY INFORMATION: Practice before the Commission is governed by the rules of practice, namely, 49 CFR 1100.7-1100.11. Persons seeking information with regard to becoming practitioners may inquire of the Secretary of the Commission.

In revising the Commission's former general rules of practice (now rules of

practice), the Commission's rules Committee gave active consideration to a revision of the Canons of Ethics but deferred action on certain of those canons. More recently, a Commission staff task force submitted a report containing 39 recommendations for improving motor carrier entry regulation (Improving Motor Carrier Entry Regulation, Ex Parte No. MC-113, July 6, 1977). Recommendation 36 of the staff task force report proposed that the Commission's Canons of Ethics (49 CFR Part 1100, Appendix A, Item 32) be amended to allow ICC practitioners to advertise their fees for services rendered in practicing before the Commission. The task force based this recommendation, in part, upon the assumption that price competition would result in reduced fees and lower costs to small carrier applicants. The lower costs would aid the small carrier applicant in overcoming the financial advantage possessed by the larger, more established carriers.

The task force also took note of the recent decision by the United States Supreme Court in *Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977). There, the Supreme Court held that attorney advertising could not be subjected to blanket suppression and that the attorney advertisement in issue was constitutionally protected. The advertisement had been placed in a newspaper and consisted of a truthful advertisement setting forth the availability and terms of routine legal services. In its decision, the Supreme Court did state that false, deceptive, or misleading advertising is subject to restraint and that reasonable restrictions may be placed on the time, place and manner of advertising.

From September through November, the Commission held a series of public hearings in seven cities to seek comments on the task force recommendations. Both oral testimony and written comments were received concerning these recommendations and other aspects of motor carrier entry regulation. Several were addressed to recommendation 36 (see Public Response to Proposals for Improving Motor Carrier Entry Regulation, Ex Parte No. MC-113, December, 1977).¹ One such comment suggested that Canon 32 be amended either to incorporate the American Bar Association's Code provisions by reference or adapt its language to the Commission's canons of Ethics. Another comment was that the public would be served better by encouraging the advertising of special backgrounds rather than the advertising of fees. One suggested that competition was in order but that the real problem was a shortage of ICC practi-

¹ Copies may be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

tioners. One stated that the only good in attorney advertising was in informing the public where the attorney is located. Another remarked that a great deal of price competition currently exists. Finally, an individual endorsed practitioner advertising but with some controls.

For ICC practitioners, Canon 32 of the Commission's Canons of Ethics embraces the traditional ban against advertising by attorneys. Canon 32 states, in part, as follows:

[S]olicitation of employment by circulars or advertisements . . . is unethical.

This amounts to blanket suppression similar to that which the Supreme Court refused to uphold in the *Bates* decision. Therefore, this Commission must amend its Canons of Ethics to allow at least the type of advertising approved in the *Bates* decision.

The rules proposed in this proceeding are designed to carry out recommendation 36 in addition to bringing the Commission's Canons of Ethics into compliance with the *Bates* decision. This would be accomplished by the amendment of Canons 14, 32, and 33. Canon 14 involves the fixing of fees. The proposed revision of Canon 14 would establish a minimum period of time for an advertised fee to be effective unless a different period is specifically set forth in the advertisement. Otherwise, it would be considered to be misleading to advertise a fee for a specific service without adhering to it in charging clients.

Canon 32 addresses direct or indirect advertising. In amending Canon 32, the proposed rules would adopt a general antifraud approach for practitioner advertising rather than listing the items allowed to be advertised. Specifically, the proposed rules would allow the use of public communications containing any information which is not "false, fraudulent, misleading, or deceptive." Guidelines would be established in the amended canon for use in determining what would constitute such prohibited information. These guidelines would consist of certain types of statements which would always be considered as "false, fraudulent, misleading or deceptive." This is the same approach and language used in one of the two proposals on attorney advertising considered by the American Bar Association.

Additionally, the proposed rules would allow practitioners to advertise on radio and television. Such a communication would have to be prerecorded and approved for broadcast by the practitioner, and a recording of the actual transmission would have to be kept by the practitioner for a specified period of time. The proposed rules would require that a paid advertise-

ment be identified as such unless it is apparent from the context. They would also amend Canon 32 to prohibit a practitioner from identifying himself as such in any advertisement in connection with any other profession or business in which he might be engaged. This would continue the prohibition against using a practitioner's status in furtherance of advertising and solicitation activities of traffic bureaus as set forth in *In re Pollack and Axelrod*, 315 ICC 391 (1962). The proposed rules would prohibit one-to-one solicitation with certain exceptions. They would prohibit practitioners from using billboards or electrical signs in advertising. The proposed rules would amend Canon 32 to make the standards for a public communication applicable to information to be placed on professional cards, letterheads, and announcement cards or in biographical insertions. This would make it unnecessary to retain any of the language in Canon 33, which would be eliminated. Finally, the proposed rules would amend Canon 32 to prohibit a practitioner from compensating a representative of any communication medium for professional publicity in a news item.

Interested parties are encouraged to submit comments on the proposed rules. (An original and 15 copies, if possible, should be submitted.)

Comments are particularly invited as to the need to include in the rules the second sentence of the proposed revision of Canon 32 setting forth examples of false, fraudulent, misleading or deceptive statements which are prohibited.

The proposed regulations would amend Items 14, 32, and 33, Appendix A, Part 1100 of Title 49 of the Code of Federal Regulations to read as follows:

14. Fixing the amount of the fee. In fixing fees, practitioners should avoid charges which overestimate their advice and services. A client's ability to pay cannot justify a charge in excess of the value of the service, although his poverty may require a less charge, or even none at all. It is misleading to advertise a fee for a specific service without adhering to it in charging clients. Practitioners are bound to charge no more than the advertised rates for 30 days following the date of the advertisement unless a different period of time for the effectiveness of such rates is clearly specified in the advertisement, or permission to charge a different rate is obtained from the Vice Chairman of the Commission.

32. Advertising, direct or indirect. A practitioner shall not in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim. Such prohibition includes, but is not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified ex-

pectation; statements of fee information which are not complete and accurate; statements containing information on past performance or prediction of future success; statements of prior Commission employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner; statements containing an opinion as to the quality of a practitioner's services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format. If the public communication is to be made through the use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission. A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.

A practitioner who is also engaged in another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a practitioner in any publication or advertisement in connection with his other profession or business.

Solicitation of employment by personal communications made to anyone other than close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients is unethical. Solicitation by personal communications includes in-person contacts, telephone contacts, contacts by direct mailings, or contacts through the use of citizens band radios or broadcasts on other than commercial radio or television. A practitioner is forbidden from making or assisting another person in making such solicitation. Similarly, practitioners are prohibited from using billboards or electrical signs in advertising. However, the customary circulation or use of professional cards, letterheads, or announcement cards which meet the standards for a public communication is not improper. Also, the insertion in reputable lists of biographical information which meets the standards for a public communication is proper.

Indirect advertisement for employment by furnishing or inspiring media comments concerning causes in which the practitioner has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the practitioner's positions, and all other like self-laudation, lower the tone of the calling and are intolerable. A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

33. (None).

These rules are issued under the authority of 49 U.S.C. 12, 17, 304, 305, 904, 916, 1003 and 1017.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

JANUARY 26, 1978.

[FR Doc. 78-3888 Filed 2-9-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

BADGER-JORDAN LAND MANAGEMENT PLAN

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a Final Environmental Statement for the Badger-Jordan Land Management Plan, Mount Hood National Forest, USDA-FS-R6-FES(Adm)-77-5.

The Environmental Statement concerns a proposed Land Management Plan and alternatives for the Badger-Jordan Planning Unit, Mount Hood National Forest. The Land Management Plan applies to approximately 58,000 acres within the National Forest boundary.

The preferred alternative proposes land use and would give management direction for six areas within the Planning Unit. The General Forest Area (Unit A) and the Scenic Influence Area (Unit C) would be managed for a variety of uses; Wildlife Management Area (Unit B) would be managed primarily for wildlife winter range with other activities permitted as compatible with the Unit goal; Unroaded Recreation Area (Units D and E) would be managed for an unroaded type recreation experience; and a Watershed Protection Area (Unit F) would be managed primarily for water quality (Dufur Watershed). Major values inherent to each area are recognized and management activities which protect those values are emphasized. This alternative would provide a good balance between all resources and National Forest users without sacrificing any resource or use at the expense of another, while leaving future management options open for changes in social and economic values. This alternative is also responsive to a wide range of public input.

The Final Environmental Statement was transmitted to EPA on February 3, 1978.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3210, 12th Street and Independence Avenue SW., Washington, D.C. 20013.

USDA, Forest Service, Pacific Northwest Region, 319 Southwest Pine Street, Portland, Ore. 97204.

Mount Hood National Forest, Supervisor's Office, 2440 Southeast 195th Avenue, Portland, Ore. 97233.

Mount Hood National Forest, Hood River Ranger District, Mount Hood-Parkdale, Ore. 97041.

Mount Hood National Forest, Barlow Ranger District, Dufur, Ore. 97021.

Wasco County Planning Commission, Courthouse, The Dalles, Ore. 97058.

Hood River County Planning Commission, Courthouse, Hood River, Ore. 97031.

In addition, colleges and universities in the vicinity of the Mount Hood National Forest have reference copies available.

A limited number of single copies are available upon request to Forest Supervisor, Mount Hood National Forest, 2440 Southeast 195th, Portland, Ore. 97233.

Copies of the Environmental Statement have been set to various Federal, State and local agencies as outlined in the CEQ guidelines.

EINAR L. ROGET,
Associate Deputy Chief.

FEBRUARY 3, 1978.

[FR Doc. 78-3813 Filed 2-9-78; 8:45 am]

[3410-11]

Forest Service

DRAFT ENVIRONMENTAL STATEMENT

Extension of Comment Period

On November 7, 1977, the Forest Service, Department of Agriculture, transmitted to the Council on Environmental Quality (CEQ) a draft environmental statement for the Chimney Rock Section, Gasquet-Orleans Road, Six Rivers National Forest, Calif., USDA-FS-R5-DES(Adm)-78-02, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. Notice of availability of this draft environmental statement was published in the FEDERAL REGISTER on November 14, 1977 (42 FR 58965). Comments were requested within 60 days after transmittal to CEQ.

To provide additional opportunity for public review and for the holding of public workshops, the comment period for this draft environmental statement was extended an additional 30 days (42 FR 65225) to February 6, 1978.

The comment period for this draft environmental statement is now being

extended an additional 30 days to March 8, 1978.

Copies of the draft environmental statement are available for inspection at the locations listed in the Notice of Availability of Draft Environmental Statement (42 FR 58965).

Copies of a summary booklet, as well as a limited number of single copies of the environmental statement, are available, upon request, from Forest Supervisor Richard E. Burke, Six Rivers National Forest, 710 E. Street, Eureka, Calif. 95501.

Comments concerning the proposed action should be addressed to Supervisor Burke and should be received by March 8, 1978, in order to be considered in the preparation of the final environmental statement.

JOHN W. CHAFFIN,
Deputy Regional Forester.

FEBRUARY 3, 1978.

[FR Doc. 78-3825 Filed 2-9-78; 8:45 am]

[3410-02]

Agriculture Marketing Service

Packers and Stockyards Administration

HUNTSVILLE LIVESTOCK AUCTION, HUNTSVILLE, ARK., ET AL.

Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., Name, Location of Stockyard, and Date of Posting

AR-121—Huntsville Livestock Auction, Huntsville, Ark., December 12, 1958.
LA-132—Rayville Livestock Auction, Inc., Rayville, La., July 13, 1960.
LA-135—Joe Tate Commission Barn, Inc., Ville Platte, La., March 23, 1959.
MS-152—Davis Livestock Commission Co., Ecru, Miss., April 22, 1974.
MS-122—Liberty Livestock, Liberty, Miss., February 17, 1959.
MS-129—Bill Ivey's Stockyard, Inc., Monticello, Miss., September 20, 1968.
MS-132—Olive Branch Sales Co., Olive Branch, Miss., May 26, 1959.
MS-150—Prentiss Stockyards, Inc., Prentiss, Miss., July 31, 1973.

TN-123—Hartsville Livestock Market, Hartsville, Tenn., January 21, 1967.
 VA-100—Abingdon Livestock Market, Inc., Abingdon, Va., July 23, 1953.
 VA-121—Lynchburg Livestock Market, Inc., Lynchburg, Va., March 11, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the *FEDERAL REGISTER*. This notice shall become effective February 10, 1978.

(42 Stat. 159, as amended and supplemented (7 U.S.C. 181 et seq.).)

Done at Washington, D.C., this 6th day of February 1978.

EDWARD L. THOMPSON,
*Chief, Registrations, Bonds, and
 Reports Branch, Livestock
 Marketing Division.*

[FR Doc. 78-3782 Filed 2-9-78; 8:45 am]

[3410-15]

Rural Electrification Administration

BASIN ELECTRIC POWER COOPERATIVE

Supplement to the Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Supplement to the Draft Environmental Impact Statement (DEIS) in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request from Basin Electric Power Cooperative of Bismarck, N. Dak., for a loan guarantee commitment from the Rural Electrification Administration. The proposed loan guarantee commitment would assist in obtaining financing for the construction of two 455 MW lignite-fired generating units planned for construction near Beulah, N. Dak., in conjunction with a proposed adjacent gasification plant to be built by American Natural Gas Coal Gasification Co., a major transmission facility between the plantsite and Huron, S. Dak., other minor area transmission facilities, and coal mining equipment. The Supplement to the DEIS expands upon possible alternate plant site locations for the proposed project.

This information supplements the material presented in the DEIS which was made available to the Council on Environmental Quality and the public on September 27, 1977, and was developed as a result of comments received on the DEIS.

Additional information may be secured on request submitted to Mr.

Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Supplement to the DEIS are being sent to various Federal, State, and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Supplement to the DEIS may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., or at the borrower's address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Richter at the address given above. Comments must be received within forty-five (45) days of the date of this *FEDERAL REGISTER* Notice to be considered in connection with the proposed action.

Final REA with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 3d day of February 1978.

C. R. BALLARD,
*Acting Administrator, Rural
 Electrification Administration.*

[FR Doc. 78-3832 Filed 2-9-78; 8:45 am]

[3410-15]

Rural Electrification Administration

PACIFIC NORTHWEST GENERATING CO., HERMISTON, OREG.

Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Final Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a proposed application for financing by the Rural Electrification Administration for Pacific Northwest Generating Co., P.O. Box 48, Hermiston, Oreg. 97838, to finance a 10-percent share of the Boardman Coal Plant, a 550 MW coal-fired, steam-electric generating station near Boardman in Morrow County, Oreg., and associated transmission lines all in the State of Oregon.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator, Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, SW., Washington, D.C., Room 4310 or at the borrower's address indicated above. Final action may be taken with respect to this matter after thirty (30) days.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 27th day of January, 1978.

DAVID A. HAMILL,
*Administrator, Rural
 Electrification Administration.*

[FR Doc. 78-3850 Filed 2-9-78; 8:45 am]

[6325-01]

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy Director for Economics, Policy Analysis and Budget, Office of the Director for Economics, Policy Analysis and Budget.

UNITED STATES CIVIL SERVICE COMMISSION,
 JAMES C. SPRY,
*Executive Assistant to the
 Commissioners.*

[FR Doc. 78-3807 Filed 2-9-78; 8:45 am]

[6820-33]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1978 a service to be provided by and commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 10, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On November 11, 1977, September 2, 1977, and October 7, 1977 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (42 FR 58775), (42 FR 44261), and (42 FR 54591) of proposed additions to Procurement List 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the service and commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48(c), 85 Stat. 77.

Accordingly, the following service and commodities are hereby added to Procurement List 1978:

SIC 5812

Catered Noon Meals (SH). Armed Forces Examining and Entrance Station, Seattle, Wash.

CLASS 8465

Clipboard, Pilot's (SH), 8465-01-012-9174.

CLASS 9905

Sign (U.S. Property-No Trespassing) (IB), 9905-00-559-2971.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-3791 Filed 2-9-78; 8:45 am]

[6820-33]

PROCUREMENT LIST 1978

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1978 a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 13, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1978, November 14, 1977 (42 FR 59015):

SIC 7349

Janitorial/Custodial Services, Veterans Administration, 252 Seventh Avenue, New York, N.Y.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-3792 Filed 2-9-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. SEPA 78-1]

LAUREL PROJECT, SOUTHEASTERN POWER ADMINISTRATION

Hearing

On November 10, 1977, the Acting Assistant Secretary for Resource Applications transmitted to the Administrator of the Economic Regulatory Administration (ERA) a contract for the sale of power by the Southeastern Power Administration from the Laurel Project to East Kentucky Power Cooperative, Inc., for the period November 1, 1977, to January 31, 1978. The Administrator was asked to confirm and approve the short term rates contained in that contract.

On December 20, 1978, ERA issued a notice of intent to act on this proposal, 42 FR 64406 (December 23, 1977), which invited interested parties to submit written comments on or before January 23, 1978. The notice was amended on January 10, 1978, 43 FR 2206 (January 16, 1978), to afford interested parties the opportunity to present oral testimony at a public hearing. The cities of Barbourville, Corbin, and Falmouth, Ky., have made a request for an oral presentation, which has been granted.

Notice is hereby given that the public hearing will be held on February 23, 1978, at 9:30 a.m., in Room 2105, 2000 M Street NW., Washington, D.C. Time permitting, other interested parties may be permitted to speak at the hearing.

Issued in Washington, D.C., February 7, 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-3837 Filed 2-9-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

ISSUANCE OF DECISIONS AND ORDER BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of November 14 through November 18, 1977

Notice is hereby given that during the week of November 14 through November 18, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Buck's Butane & Propane Service, Inc., San Jose, Calif., FRA-1315, Propane

Buck's Butane and Propane Service, Inc. (Buck's) filed an Appeal from a Remedial Order which the Director of the Compliance Division of FEA Region IX issued to the firm on April 21, 1977. In the Remedial Order, the FEA found that during the period November 1, 1973 through February 29, 1976, Buck's had improperly sold propane at prices which were in excess of the maximum permissible price levels computed pursuant to 6 CFR 150.359 and 10 CFR 212.93. In addition, the Remedial Order found that Buck's had charged its customers unlawful prices for propane tank rentals. Buck's was therefore directed to refund the overcharges, plus interest, to its customers. In its Appeal, Buck's challenged the determination in the Remedial Order that the firm's propane prices had violated applicable regulations. In rejecting this portion of the Appeal, the DOE found that there was no merit to the firm's assertion that a corporation which supplied propane to Buck's and which is owned by the same individuals who own Buck's was not a part of the same "firm," as that term is defined in 10 CFR 212.31. The DOE therefore concluded that Buck's had improperly determined its product costs under Section 212.93, and had sold propane at unlawful price levels. Buck's also raised a number of issues concerning the firm's tank rental violations. The DOE rejected the firm's argument that the FEA lacked the authority to regulate tank rental prices. In addition, the DOE found that Buck's tank rental activities constituted a "tie-in arrangement" within the meaning of 10 CFR 210.62. Finally, Buck's contended that the DOE should be estopped from enforcing the provisions of the April 21 Remedial Order. In considering this contention, the DOE noted that the record in the proceeding indicated that the overcharges

specified in the Remedial Order were largely attributable to Buck's reliance upon the incorrect advice of FEA and IRS auditors. In addition, the DOE found that certain IRS and FEA personnel involved in the audit of the Buck's firm had acted beyond the scope of their authority. Nevertheless, the DOE determined that a balancing of the equitable considerations involved in the case led to the conclusion that Buck's should not be permitted to retain revenues which the firm was never legally entitled to receive from its customers. The DOE concluded, however, that there were several issues which must be reexamined in order to determine the nature and extent of Buck's current refund obligation, *viz.*, the propriety of assessing interest against Buck's, and the proper treatment of the refunds which the firm has already made to its customers in accordance with the unauthorized instructions of FEA personnel. The Buck's Appeal was therefore denied in part and remanded in part.

Lake Region Gas Co., Paducah, Ky., FRA-1335, Propane

Lake Region Gas Co. (Lake Region) filed an Appeal from a Remedial Order which was issued to the firm on April 21, 1977 by FEA Region IV. In the Remedial Order, the FEA found that Lake Region had charged unlawful prices for propane which it sold. The Remedial Order directed Lake Region to immediately refund to its customers the amount of the overcharges, plus interest. In considering the Appeal, the DOE found that contrary to Lake Region's assertion, May 15, 1973 is not an arbitrary and unreasonable date for the purposes of calculating maximum permissible selling prices. The DOE found that the fact that Lake Region was not aware of the existence of the Mandatory Petroleum Price Regulations during the period of time in which the overcharges occurred does not excuse the firm from its clear legal obligation to comply with the provisions of those regulations. The DOE also found that Lake Region failed to establish that the price reductions which it made were implemented for the sole purpose of restitution for previous overcharges and should therefore be permitted to offset a portion of the firm's liability for refunds. Finally, the DOE found that in view of the undue administrative delay on the part of the FEA Region IV in issuing the Remedial Order and reaching a determination on an exception application filed by Lake Region, it would be inappropriate to require the firm to refund interest on the overcharges accrued during the period of time during which the exception application was pending. The Remedial Order was therefore modified to require Lake Region to refund interest accrued on the overcharges until May 14, 1975. In all other respects the Lake Region Appeal was denied.

Wild, Carter, Hamlin, Tipton & Quaschnick, Fresno, Calif., DFA-0006, Freedom of Information

The law firm of Wild, Carter, Hamlin, Tipton & Quaschnick (Wild Carter) appealed from a partial denial by the FEA Information Access Officer of a Request for Information which the firm had submitted under the Freedom of Information Act (the Act). In its Appeal, Wild Carter requested that the DOE reverse the initial determination and order the release of six documents which the Information Access Officer had withheld from the firm. The Information

Access Officer denied the firm access to those documents on the grounds that they were exempt from mandatory disclosure as intra-agency memoranda under the provisions of 5 U.S.C. 552(b)(5). In considering the Appeal, the DOE found that the documents which were withheld from the firm generally summarized and analyzed a number of problems associated with the application of the Mandatory Petroleum Price Regulations to crude oil producers. The DOE determined that the material withheld was predecisional in nature and that it was precisely the type of information which Exemption 5 of the Act was designed to protect from disclosure. In addition, the DOE determined that there were no portions of the documents which contain purely factual material which could be easily severable from the policy discussions contained in the documents and released to the firm. Accordingly, the DOE affirmed the denial of access to the six documents which were withheld by the FEA Information Access Officer. However, the DOE also concluded that other documents which properly fall within the scope of Wild Carter's Request for Information may exist within the Office of Congressional Affairs of the Office of Inter-governmental and Institutional Relations and had not been reviewed by the Information Access Officer. The FEA therefore remanded the matter and directed that an immediate review of those documents be conducted to determine which are releasable.

REQUESTS FOR EXCEPTION

William P. Carr, Dallas, Tex., FEE-4384, Crude Oil

William P. Carr filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would permit the firm to sell a portion of the crude oil produced from the Stratmann Lease located in Ellsworth County, Kans., at upper tier ceiling prices. In considering the exception request, the DOE found that the cost of producing crude oil from the Stratmann Lease property had increased since 1973 to a level where those costs now exceed the revenues which the firm may realize from the sale of the crude oil at lower tier ceiling prices. The DOE concluded that under these circumstances Carr has no apparent economic incentive to continue producing crude oil from the Stratmann Lease. The DOE also found that it was highly unlikely that the crude oil from the reservoir underlying the lease would be recovered by any other firm in the absence of exception relief. On the basis of precedents involving similar factual situations, the DOE concluded that the application of the lower tier ceiling price rule under these circumstances resulted in a gross inequity to Carr. Accordingly, on the basis of the operating data which the firm submitted for its most recently completed six month period, Carr was granted exception relief which permits the firm to sell at upper tier ceiling prices 48.38 percent of the crude oil produced and sold from the Stratmann Lease for the benefit of the working interest owners.

Lampton-Love, Inc., Jackson, Miss., FEE-4099; FEE-4354, Propane

Lampton-Love, Inc. filed an Application for Exception from the provisions of 10 CFR 212.93 which, if granted, would permit the firm to increase the prices which it may charge for propane which it sells to three classes of purchaser in the firm's southern Louisiana market area. Lampton-Love filed

a second Application for Exception in which it requested the same type of exception relief on a retroactive basis. Since both exception requests involved the same facts, they were consolidated for resolution in one proceeding. In its exception applications, Lampton-Love contended that as a result of unusual supply difficulties, the markup which it applied on May 15, 1973 in sales to three classes of purchaser in southern Louisiana was unrepresentative of its normal operating position. According to the firm, it sold propane to the three classes of purchaser concerned on May 15, 1973 at a negative gross margin because it was unable to obtain product from its major historical supplier as a result of a labor dispute, and was forced to purchase higher-priced propane from other sources on a temporary basis. In considering Lampton-Love's request for prospective relief, the DOE found that the firm's May 15, 1973 financial position in southern Louisiana was clearly unrepresentative of the firm's historical operating posture in that market area. Consequently, Lampton-Love was permitted to increase the maximum allowable prices of the propane which it sells to three classes of purchaser in southern Louisiana to reflect the firm's historical operating margin. With respect to the firm's request for retroactive relief, the DOE noted that the record did not contain sufficient information to enable the DOE to reach a determination on that request. Accordingly, Lampton-Love's request for retroactive exception relief was dismissed without prejudice to a refiling at a later date.

W. N. McMurry, Casper, Wyo., FEE-4796, Crude Oil

W. N. McMurry (McMurry) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to McMurry and would permit McMurry to continue to sell a portion of the crude oil produced from the West Sage Creek Lease located in Park County, Wyo., at upper tier ceiling prices. In considering the exception application, the DOE found that the West Sage Creek Lease is incurring a loss in its production operations and that in the absence of an extension of exception relief, the working interests would lack an incentive to produce crude oil from the property. On the basis of precedents involving similar factual situations, the DOE concluded that the application to McMurry of the lower tier ceiling price rule would continue to result in a gross inequity and that an extension of exception relief should be granted. In previous Decisions, the FEA granted exception relief which permitted a firm to reflect in its selling prices the increased operating costs per barrel incurred between the quarter which includes May 15, 1973 and the firm's most recently completed fiscal quarter. However, since the application of the methodology used in prior exception proceedings would not provide the firm with a sufficient economic incentive to continue its operations at the Lease because of substantial expenses projected for the latter half of the 1977 fiscal year which are not reflected in actual data for the first two fiscal quarters of 1977, the DOE concluded that an alternative type of relief was necessary. Exception relief was granted to permit the firm to reflect in its selling prices the difference between the cost of producing a barrel of crude oil during the 1973 calendar year

and the projected cost of producing a barrel of oil during the calendar year ending December 31, 1977. The extension of exception relief permits McMurry to sell at upper tier ceiling prices 27.63% of the crude oil produced and sold from the West Sage Creek Lease for the benefit of the working interest owners.

PETITION FOR SPECIAL REDRESS

American Service Stations, Ozone Park, N.Y. FSG-0046 Motor Gasoline

On May 24, 1977, American Service Stations filed a Petition for Special Redress in which it requested that the DOE Region VI be required to reinstitute a compliance investigation concerning the prices that Exxon Company, U.S.A. was charging it for motor gasoline. American had submitted a complaint to FEA Region VI on October 31, 1975 in which it alleged that Exxon had unlawfully withdrawn a discount that was in effect on May 15, 1973. On March 18, 1977, the Regional Office sent a letter to American in response to the Complaint in which it concluded that on the basis of the information available, it did not appear that Exxon had violated the Mandatory Petroleum Price Regulations by withdrawing its May 15, 1973 discounts from a group of purchasers that included American. In its Petition, American claimed that it had standing to challenge the statement of reasons given by Region VI for terminating the compliance investigation. In considering the American Petition, the DOE noted that the agency's consideration of a complaint is generally a matter of prosecutorial discretion. Because American alleged that it was adversely affected in a concrete manner by DOE action and had no alternative means of seeking administrative relief, the DOE concluded that American could present its contentions in a petition for special redress. The DOE concluded that the scope of review of agency actions involving prosecutorial discretion was very restricted and that the decision of whether or not to pursue a particular complaint was generally accorded great deference by a reviewing body. In the absence of a *prima facie* showing of wholly improper conduct by agency officials or a collateral attack on the objectivity of the decision-maker, the DOE held that the enforcement officials of the agency are not required to provide a complainant with an explanation of the reasons for their decisions. Moreover, where a statement of reasons is voluntarily provided by the enforcement officials, the scope of review in a special redress proceeding was very limited in nature. In applying these standards to the American Petition, the DOE found that the response of Region VI to American provided a satisfactory explanation for terminating its investigation of Exxon's pricing practices. Accordingly, the American Petition was denied.

REQUESTS FOR STAY

A. Johnson and Co., Inc., New York, N.Y. DES-0101, Crude Oil

A. Johnson and Co., Inc. (Johnson) requested that certain provisions of the Mandatory Petroleum Allocation and Price Regulations be stayed during the pendency of an Application for Exception which the firm had filed. Specifically, Johnson requested permission to treat the two refineries which it operates as separate entities for all purposes of the DOE Regulatory Program. After examining the firm's position under the Petroleum Allocation and Price

Regulations the DOE found that the question of separate refinery treatment has relevance only to Johnson's position under the provisions of the Entitlements Program (10 CFR 211.67). In addition, the DOE determined that Johnson had failed to show that it would experience either a serious hardship or a gross inequity in the absence of the specific stay relief which it requested. The DOE further determined that Johnson had failed to establish a likelihood of success on the merits of its Application for Exception. Accordingly, the Johnson Application for Stay was denied.

Chevron USA Inc., San Francisco, Calif. DES-0022 Crude Oil

Chevron USA Inc. (Chevron) filed an Application for Stay of an Order which was issued to the firm on October 19, 1977, under the Mandatory Crude Oil Allocation Program. The Order directed Chevron to sell 397,953 barrels of suitable crude oil to Plateau, Inc. during the allocation period October 1, 1977 through March 31, 1978. The Stay Request, if granted would temporarily relieve Chevron of this obligation pending a determination by the DOE on an Appeal of the October 19 Order which Chevron has also filed. After considering the contentions raised by Chevron and Plateau, the DOE determined that the October 19 Order may provide Plateau with unwarranted benefits at the expense of Chevron. In order to maintain the *status quo ante* pending further analysis and the resolution of several contested issues of fact, the DOE determined that Chevron's Request for Stay be granted in part.

Husky Oil Co. of Delaware, Washington, D.C. DES-0079 Crude Oil

Husky Oil Co. of Delaware requested that its obligations under 10 CFR 211.67 (the Entitlements Program) be stayed beginning with the month of December 1977 pending judicial review of a Decision and Order with the FEA in *Husky Oil Co. of Delaware*, 5 FEA Par. 80,649 (June 2, 1977). In considering the Husky request, the DOE found that the material which the firm had submitted did not make a *prima facie* showing that the firm satisfied any of the applicable criteria in Section 205.125(b) for the approval of a stay. The DOE therefore denied the request for stay.

REQUESTS FOR MODIFICATION OR RECISION

Sabre Refining, Inc., Bakersfield, Calif. FMR-0126 Crude Oil

Sabre Refining, Inc. filed an Application for Modification of a Decision and Order issued in *Sabre Refining, Inc.*, 6 FEA Par. 83,030 (July 5, 1977). In the July 5 Order the FEA granted Sabre an exception from the provisions of 10 CFR 211.67 (the Entitlements Program) which relieved the firm of a portion of its obligation to purchase entitlements during the six month period July through December 1977 for its crude oil runs to stills and receipts during the months of May through October 1977. Sabre's request, if granted, would have resulted in a modification of the July 5 Order and thereby relieved the firm of its entire obligation to purchase entitlements during the July through December 1977 period. In support of its request for modification, Sabre claimed that the amendment of Section 211.67(e)(2), which prevents Sabre and other small refiners from earning bias entitlements with respect to the crude oil which is processed for their account by other re-

finers, constituted a significantly changed circumstance which resulted in a higher entitlement purchase obligation for Sabre. In considering the request, the DOE noted that the amendment to Section 211.67(e)(2) was issued on April 20, 1977, and published in the FEDERAL REGISTER on April 26, 1977, well before the June 8, 1977 date on which Sabre initially submitted its exception application and more than two months before July 5, 1977 when the exception Decision and Order was issued to Sabre. Since Sabre had ample time to give notice of the effect of the amendment to Section 211.67(e)(2) on the firm but failed to do so, the DOE found that no showing had been made of the existence of significantly changed circumstances. In the course of its evaluation of the Sabre petition, the DOE also discovered a calculational error in the computation of the exception relief which was specified in the July 5 Decision. Sabre was therefore granted additional exception relief in the months of November and December 1977 to account for the error in the July 5 Decision and Order. In all other respects, the Request for Modification was denied.

Tenneco Oil Co., Washington, D.C. FRR-0114, Motor Gasoline

Tenneco Oil Co. filed an Application for Modification of a Remedial Order which was issued to it by FEA Region VI on February 2, 1977. In the Remedial Order, the FEA found that as a result of improperly calculating its May 1973 cost and quantity of purchased gasoline, Tenneco had sold motor gasoline at prices which exceeded the firm's maximum allowable selling prices during six months of the period June 1974 through January 1976. The firm was as a result directed to refund overcharges of \$12,216,000 to its customers. In its Application, Tenneco contended that the FEA erred in calculating the amount of the firm's overcharges. Tenneco claimed that it could have reallocated unrecouped increased product costs which were attributable to the general refinery products category to support its prices for gasoline during the period in which the overcharges occurred. In rejecting this contention, the DOE found that the type of retroactive reallocation of increased costs which Tenneco proposed has never been permitted by DOE price regulations. When over-recoveries of increased product costs occur in a particular category with respect to a particular product, those overcharges must be eliminated by reductions in the firm's base price computations for the particular product involved and cannot be transferred to other product categories. Tenneco also contended that it could have had additional non-product cost increases which were available to support the prices for motor gasoline which it actually charged. With respect to this issue, the DOE found that the FEA had failed to consider that Tenneco may have had non-product cost increases available for recovery during the period January 1975 through January 1976 and that these additional increased costs could have supported the prices which it actually charged for motor gasoline. Tenneco had not raised this issue at an earlier stage of the compliance proceeding as required by Section 205.191(c) of the DOE regulations, and accordingly the Office of Administrative Review noted that it had the discretion to decline to consider the issue. In this regard, the DOE emphasized the obligation of a firm charged with violating the regulations to raise any avail-

able defense in its reply to an NOPV and stated that as a general rule the Office of Administrative Review will decline to consider new issues that were not raised during the enforcement proceeding unless a showing is made that good cause exists for the firm's failure to raise the issue or that the public interest requires that the issue be considered. Nevertheless, in view of the fact that this policy had not previously been em-

phasized by the DOE, it was determined that the issue of Tenneco's available non-product cost increases should be remanded to the Office of Enforcement for further consideration. In all other respects, Tenneco's Application was denied.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The office of Administrative Review of

the Department of Energy has issued Decisions and Order granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain non-product costs increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Mobil Oil Corp.	FEE-4706	Cameron	Cameron Parish, La.	\$0.0083
	FEE-4707	Dewey County	Dewey County, Okla.	(*)
	FEE-4708	Indian Basin	Eddy County, N. Mex.	.0068
	FEE-4709	Shell Selling	Dewey County, Okla.	.0230
	FEE-4710	South Sarepta	Bossier Parish, La.	.0262
	FEE-4711	Spivey	Harper County, Kans.	.0079
	FEE-4712	Tenneco Ames	Major County, Okla.	.0147
Standard Oil Co. (Indiana)	FEE-4765	Cotton Valley	Webster Parish, La.	.0324
	FEE-4766	Patterson	St. Mary's Parish, La.	.0177
	FEE-4767	South Sarepta	Boosier Parish, La.	.0444
	FEE-4768	Toca	St. Bernard Parish, La.	.0065
	FEE-4769	Vermillion	Vermillion Parish, La.	.0194
	FEE-4812	Elk Basin	Park County, Wyo.	.0100

* Denied.

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Doss, Inc., Washington, D.C., FXA-1434

The following submission was dismissed on the grounds that the request is now moot:

Young Coal Co., Waterloo, Iowa, DRS-0031

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of
Administrative Review.

FEBRUARY 2, 1978.

[FR Doc. 78-3795 Filed 2-9-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of November 21 through November 25,
1977

Notice is hereby given that during the week of November 21 through No-

vember 25, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C., DFA-0010, freedom of information

The law firm of Arent, Fox, Kintner, Plotkin & Kahn appealed from a denial of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In its initial request, Arent, Fox had requested that the DOE release the average annual profit margins realized by Famariss Oil Corp., Powerline Oil Co. and Husky Oil Co. of Delaware during the years when each firm was expanding its refinery capacity, as well as the profit margins which the DOE used for determining exception relief from the Entitlements Program for each of those firms. Arent, Fox had also requested similar information with respect to the San Joaquin Refining Co. during its first four years of operation. In considering the Appeal, the DOE found that the Information Access Officer had correctly determined that the information concerning Famariss, Powerline and San Joaquin was confidential under the standards established in *National Parks & Conservation*

Ass'n. v. Morton, 498 F. 2d 765 (D.C. Cir. 1974). The DOE also found that the confidentiality of this data could not be maintained by the deletion of the names and identifying details of these three firms. However, because Husky had voluntarily disclosed the requested financial data in a federal court proceeding, the DOE concluded that the information regarding Husky could no longer be considered confidential under the FOIA. The DOE further determined that, contrary to the Arent, Fox assertion, the deletion of confidential data in the agency's Decisions and Orders was the most rational and effective means of accomplishing the objectives of the FOIA. Accordingly, the Arent, Fox Appeal was granted with respect to the data requested concerning Husky but denied in all other respects.

Blouin Brothers, Inc., Enosberg Falls, VI, FRA-1384, refined products

Blouin Brothers, Inc. filed an Appeal from a Remedial Order which was issued to the firm on June 16, 1977 by the FEA Region I Office. In the Remedial Order, the FEA determined that during the period November 1, 1973 through May 31, 1974, Blouin had sold No. 2 fuel oil, kerosene, diesel fuel and gasoline at prices which exceeded the maximum permissible price levels permitted under Section 212.93, and directed the firm to make refunds to the customers which it had overcharged. In considering the Appeal, the DOE found no merit to Blouin's contention that the computation of its weighted average cost of product in inventory should include the product which it was entitled to purchase but had not as yet purchased. The DOE also determined that Blouin should not be relieved of its obligation to refund the overcharges on the grounds that the oral advice which it received from an Inter-

nal Revenue Service/Cost of Living Council auditor was erroneous. The Blouin Appeal was accordingly denied.

Continental Oil Co., Houston, Tex., DFA-0018; Standard Oil Co., of Ohio, Cleveland, Ohio, DFA-0024, freedom of information

The Continental Oil Co. and the Standard Oil Co. of Ohio (SOHIO) filed Appeals from partial denials of their Requests for Information. Each firm had requested the disclosure under the Freedom of Information Act (the FOIA) of documents relating to the FEA Transfer Pricing Program. The FEA Information Access Officer had released to each firm a computer printout listing summaries of price and volume information for transactions in various crude oils which had been reported to the FEA. However, the Information Access Officer deleted the aggregate quantities and average prices of crude oils for months when three firms or less participated in transactions. In considering the Appeals, the DOE determined that the price and volume information which was traceable to individual firms transacting in the crude oils was properly exempted from disclosure under Section 552(b)(4) of the FOIA. However, the DOE held that the Information Access Officer erred in deleting aggregate quantities and average prices in months when three or more firms had reported transactions in a given crude oil. The DOE determined that in those instances the Information Access Officer must provide Continental and SOHIO with aggregate volume and average price information unless (i) one of the three firms involved is a governmental entity or a public utility which generally discloses the details of its crude oil purchases, or (ii) fewer than three firms actually lifted the particular type of crude oil during that month. The DOE also found that an additional document existed which was within the scope of the firms' requests, and directed the Information Access Officer to determine whether that document should be released.

Empire State Fuel, Inc., New York, N.Y., FRA-1321, No. 2 heating oil

Empire State Fuel, Inc. appealed from a Remedial Order which was issued to the firm by the FEA Region II Office on April 29, 1977. In the Remedial Order, the Regional Office found that Empire had sold No. 2 heating oil at prices in excess of the maximum permissible levels permitted under Section 212.93, and directed the firm to make refunds to the customers which it had overcharged. In considering the Appeal, the DOE found that Empire had failed to substantiate its claim that it had undercharged its customers for the purpose of making restitution for past overcharges. The DOE also determined that the Regional Office had properly treated the transportation costs incurred by the firm as non-product costs which could be reflected in the firm's maximum lawful selling prices only to the extent permitted by Section 212.93(b). However, the DOE found that, in calculating Empire's weighted average cost of product-in-inventory on May 15, 1973, the Regional Office had failed to include a portion of the product which was in inventory on that date. The DOE therefore made the proper calculations and modified the Remedial Order in order to assess the additional overcharges against the firm.

Farmers Gas and Oil Co., Ithaca, Mich., FRA-1393, motor gasoline

Farmers Gas and Oil Co. (Fargo) filed an Appeal from a Remedial Order which was issued to the firm by the FEA Region V Office on June 28, 1977. In the Remedial Order, the Regional Office found that Fargo had charged prices for motor gasoline which were in excess of the maximum levels permitted under 10 CFR 212.93 and directed the firm to refund the revenues which it had improperly received. In considering the Appeal, the DOE determined that Fargo had failed to comply with repeated requests that the firm provide sufficient information to substantiate its claims of error in the Remedial Order. Accordingly, the Fargo Appeal was denied.

Jay Oil Co., Tulsa, Okla., FRA-1330, motor gasoline; diesel fuel

Jay Oil Co. filed an Appeal from a Remedial Order issued to the firm by the FEA Region VI Office on May 6, 1977. In the Remedial Order, the Regional Office found that, during the period from November 1, 1973 through February 28, 1975, Jay had charged prices in excess of the maximum permissible levels for motor gasoline and diesel fuel permitted under Section 212.93 as the result of an erroneous determination of its classes of purchaser. The Regional Office therefore directed Jay to refund the overcharges. In considering the Appeal, the DOE rejected Jay's contention that it should be relieved of the refund obligation because it was entitled to rely on the oral advice which it received from a Cost of Living Council auditor. The DOE also rejected the firm's claim that it should not be required to make the refunds specified the Remedial Order since it had allegedly reduced its selling prices in order to make restitution for the amounts in question. In this regard, the DOE found that Jay had failed to provide any evidence which established that it did in fact reduce its selling prices for that purpose. However, the DOE found that the firm might experience an inordinate degree of difficulty in meeting the repayment terms specified in the Remedial Order. Accordingly, the Remedial Order was remanded to Region VI for modification of the terms of repayment.

Marathon Oil Co.; Ingram Corp., Washington, D.C., FRA-1377, unleaded gasoline

The Marathon Oil Co. and the Ingram Corp. filed joint Appeals from a consolidated Decision and Order which the FEA issued on May 28, 1977. *Marathon Oil Co.*, 5 FEA Par. 83,166 (May 28, 1977). In the prior Decision, the FEA denied Ingram's request that exception relief be approved which would have resulted in Ingram being considered as a base period purchaser of unleaded gasoline from Marathon. That determination was based on the FEA's finding that Ingram had been a party to the sale of a Garyville, Louisiana refinery to Marathon in 1976 and had realized substantial economic benefits from that transaction which significantly outweighed any inconvenience resulting from the firm's inability to receive an assured supply of unleaded motor gasoline from the refinery. In considering the Appeal, the DOE determined that Ingram had made a discretionary business decision to accept certain risks associated with the construction of the refinery. The DOE also determined that Ingram's position was distinguishable from that of three other firms which had received exception relief since Ingram received substantial economic benefits from the sale of the Garyville refinery.

Accordingly, the joint Marathon and Ingram Appeal was denied.

Midland Cooperatives, Inc., Minneapolis, Minn., FRA-1362, crude oil

Midland Cooperatives, Inc. filed an Appeal from a Decision and Order which the FEA issued to it on November 5, 1976. See *Beacon Oil Co.*, 4 FEA Par. 87,024 (November 5, 1976). In the previous Decision, the FEA determined that Midland had received an excessive measure of exception relief from its 1975 entitlements purchase obligation. The November 5 Order therefore required Midland to purchase entitlements valued at \$1,057,841 during the period November 1976 through October 1977, in order to make restitution for the excessive benefits which the firm had received. In considering the Appeal, the DOE rejected the firm's contention that its historical profit margin was erroneously calculated by the inclusion of patronage refunds which Midland was required to distribute to its cooperative members. The DOE also rejected the firm's contention that it would incur an additional income tax liability as a result of the firm's status as a non-profit cooperative business entity. The DOE did, however, find that the November 5 Decision was based in part upon erroneous factual data submitted by the firm which did not exclude its crude oil production activities. The DOE concluded that since Midland's action did not appear to be intentional, the firm should be permitted to recalculate its financial and operating results for the historical measurement period, as well as for its 1975 fiscal year, by including only the financial and operating results for its petroleum refining and marketing operations. Accordingly, the Midland Appeal was granted in part and the firm's entitlements purchase obligation was reduced.

M. J. Mitchell, Dallas, Tex., FRA-1410, crude oil

M. J. Mitchell filed an Appeal from a Decision and Order which the FEA had issued to him on July 8, 1977. *M. J. Mitchell*, 6 FEA Par. 83,030 (July 8, 1977). In the previous Decision, the FEA denied Mitchell's request for an extension of exception relief which had permitted him to sell the crude oil produced from the Mitchell State Minnelusa Sand Unit in Campbell County, Wyo. at upper tier ceiling prices. The Appeal, if granted, would rescind the July 8 Decision and reinstate Mitchell's exception relief. In considering the Appeal, the DOE found that the FEA had excluded \$38,829.21 in expenses which were attributable to the repair and replacement of a Reda pump and cables on the grounds that these were extraordinary capital improvements. When the expenses were excluded, the FEA had found that the revenue which Mitchell obtained from the Unit exceeded the expenses attributable to the Unit and that operation of the Unit had therefore become economically viable. The DOE reviewed the analysis which had been employed by the FEA in order to determine whether a given expenditure should be treated as a capital item or an operating expense for purposes of the exceptions process. The DOE concluded that a more precise series of determinations would be useful and established the following presumptions: an expenditure will be treated as an operating expense if (i) it is less than \$15,000, or (ii) it will have a productive life of less than 18 months, or (iii) the overall expenses (excluding any expenditures associated with drilling new wells or enhanced

recovery projects) for the category in which the individual expenditure is included do not exceed by more than one-third the average level of expenses in that category for the preceding three years. In applying these criteria to the present Appeal, the DOE found that the pump repair expenditures which the FEA had excluded were the type of expenditures which must be repeated within an 18 month period and may therefore be properly included as operating expenses for the year in which they were incurred. Therefore, the DOE adjusted the financial data which Mitchell submitted to reflect these additional operating costs. On the basis of that adjustment, the DOE concluded that, in order to provide Mitchell with an economic incentive to continue production, exception relief should be granted which permits the firm to sell at upper tier ceiling prices 46.25 percent of the crude oil produced and sold from the Unit for the benefit of the working interest owners.

Shank, Irwin, Conant, Williamson and Grevelle, Dallas, Tex., DFA-0023, Freedom of information

The law firm of Shank, Irwin, Conant, Williamson and Grevelle filed an Appeal from a denial of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). Shank, Irwin had requested the release of any documents not previously made public which related to the FEA's determination of transactions that were deemed to constitute "a firm sale into U.S. commerce" and "a transaction pursuant to which a product is imported," as those phrases were used in FEA Interpretation 1975-24. In the initial determination, the FEA Information Access Officer had located a memorandum which was within the scope of the firm's request, but found that the memorandum was exempt from mandatory disclosure under 5 U.S.C. 552(b)(5). In considering the Appeal, the DOE determined that the deliberative content of the memorandum was properly withheld from Shank, Irwin since it constituted a predecisional intraagency communication whose disclosure could impair the quality of agency decisions. However, the DOE determined that section 552(b)(5) did not apply to those factual passages in the document which were readily segregable from the policy discussions contained therein. The Shank, Irwin Appeal was therefore granted with respect to the memorandum. The DOE also discovered a second memorandum which fell within the scope of Shank, Irwin's request, however, the DOE determined that this document should not be released since it was within the scope of the section 552(b)(5) exemption. In addition, the DOE was apprised of the existence of other documents which fell within the scope of Shank, Irwin's Request for Information. With respect to these documents, the DOE directed the Information Access Officer to determine whether the information contained therein should be released to Shank, Irwin under the FOIA.

REQUESTS FOR EXCEPTION

City of Long Beach, Calif., Long Beach, Calif., FFE-4856, crude oil

The city of Long Beach, Calif. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief previously granted to the city and would permit Long Beach to sell at upper tier ceiling prices cer-

tain quantities of the crude oil produced from Fault Block Unit 3 (Unit 3) of the Wilmington Field, located in Long Beach, Calif. *City of Long Beach, Calif., 5 FEA Par. 83,153 (May 10, 1977).* In considering the Long Beach Application, the DOE found that operating costs at Unit 3 had increased substantially since the issuance of the May 10 Decision and Order and that Long Beach had continued to experience operating losses at the Unit despite the exception relief approved in that proceeding. Accordingly, the DOE concluded that exception relief should be approved for an additional six-month period in order to provide Long Beach with an adequate economic incentive to continue production operations. In calculating the percentage of relief which should be approved under the traditional formula, the DOE determined that the actual market prices for new crude oil and old crude oil should be utilized instead of the applicable upper tier and lower tier ceiling prices. However, the DOE found no merit to Long Beach's contention that the application of the standard formula in all other respects failed to provide the City with a sufficient economic incentive to continue production operations. Accordingly, exception relief was approved for a six-month period which permitted Long Beach to sell at upper tier ceiling prices 66.41 percent of the crude oil produced and sold from Unit 3 for the benefit of the working interest owners.

Ely Crude Oil Co., Ely, Nev., FEE-4413, crude oil

Ely Crude Oil Co. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program). The exception request, if granted, would permit any refiner which purchases crude oil from Ely to exclude the volumes of crude oil involved from the reports of that refiner's crude oil runs to stills. After considering Ely's request, the DOE issued a Proposed Decision and Order on October 21, 1977, in which it found that all of the crude oil which Ely had produced was old crude oil of a particularly low quality. Based upon that determination, and in view of the high cost of transporting the crude oil to the nearest refinery, the DOE found that it was not economical for a refiner to purchase crude oil from Ely if the refiner was also required to incur an entitlements purchase obligation for the crude oil. As a result, Ely was unable to locate a purchaser for its crude oil and was forced to suspend production. Therefore, the DOE granted Ely exception relief based upon the principles established in *Western Oil Lands, Inc., 4 FEA Par. 83,232 (December 6, 1976)*, so that any refiner which purchased crude oil from Ely would be permitted to exclude that quantity from its crude oil runs to stills for purposes of the Entitlements Program. Since no Notice of Objection to the Proposed Decision was filed, the determination was issued in final form on November 22, 1977, and exception relief was made effective as of October 21, 1977.

Gulf Oil Corp., Tulsa, Okla., FFE-4620, FFE-4621, FFE-4622, FFE-4623, FFE-4624, FFE-4625, FFE-4626, FFE-4627, FFE-4628, FFE-4629, FFE-4630, FFE-4631, FFE-4632, FFE-4633, FFE-4634, FFE-4635, FFE-4636, FFE-4637, FFE-4638, FFE-4640, FFE-4641, FFE-4642, FFE-4643, FFE-4644, FFE-4645, FFE-4647, natural gas liquid products

Gulf Oil Corp. filed 26 Applications for Exception from the provisions of 10 CFR

212.165. The exception requests, if granted, would permit the firm to increase its prices for natural gas liquid products to reflect the nonproduct cost increases which the firm has incurred at twenty-six of its natural gas processing plants. In considering the applications, the DOE noted that exception relief will generally be granted to any natural gas processor which can demonstrate that the nonproduct costs which it has experienced since the fiscal quarter including May 1973 have increased by an amount substantially in excess of the \$0.005 per gallon pass through permitted under the provisions of section 212.165. The DOE determined that Gulf had made that type of showing with respect to each of the 26 plants, and therefore proposed to grant exception relief for those plants for the October 1, 1977, through March 31, 1978 period. A Decision and Order was issued in proposed form to Gulf on September 30, 1977.

On October 20, 1977, Gulf filed a Notice of Objection to the Proposed Decision and Order in accordance with the procedures which afford the firm the right to contest any finding of fact or conclusion of law reached in that determination. However, Gulf subsequently indicated that it did not wish to file a Statement of Objections in the proceeding and requested that its Notice of Objection be withdrawn. Since no other aggrieved party filed a Notice of Objection within the ten day period following service of the Proposed Decision and Order as required by the applicable DOE procedures, a Decision and Order was issued in final form which established September 30, 1977 as the effective date for the exception relief.

P&M Petroleum Management, Denver, Colo., FEE-4464, crude oil

P&M Petroleum Management filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit P&M to sell the crude oil produced from the Track Lease, Well No. 1 in Roosevelt County, Mont., at upper tier ceiling prices. P&M also requested that exception relief be made retroactive to May 1, 1977. In considering the exception request, the DOE found that the operating costs associated with the production of crude oil at the Track Lease had increased to the point where P&M no longer had an economic incentive to continue the production of crude oil from that lease. The DOE also determined that if P&M abandoned its operations at the lease, a substantial quantity of domestic crude oil would not be recoverable. The DOE therefore concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to P&M. On the basis of the operating data presented for the most recent six month period, P&M was granted exception relief which permitted the firm to sell at upper tier ceiling prices 23.76 percent of the crude oil produced from the Track Lease for the benefit of the working interest owners. However, the DOE also determined that P&M had failed to establish that exception relief should be made retroactive to May 1, 1977.

Phillips Petroleum Co., Bartlesville, Okla., FFE-4802, crude oil

The Phillips Petroleum Co. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief which would permit Phillips and certain other working

interest owners to sell at upper tier ceiling prices the crude oil produced for their benefit from the Hopkins "A" Lease in Panola County, Tex. See *Phillips Petroleum Co.*, 5 FEA Par. 83,175 (June 9, 1977). In considering the Phillips application, the DOE determined that the working interest owners were no longer experiencing the high operating expenses and the resulting operating losses upon which the previous exception relief was founded. Accordingly, the DOE found no basis for an extension of exception relief and the Phillips request was denied.

Quincy Oil, Inc., Quincy, Mass., FEE-4060, No. 6 fuel oil

Quincy Oil, Inc., filed an Application for Exception from Ruling 1977-5. The exception request, if granted, would relieve Quincy of its obligation to refund overcharges relating to its sales of No. 6 fuel oil during the period prior to June 1, 1976. Ruling 1977-5 concerned the application of the term "transaction" for purposes of computing a firm's weighted average May 15, 1973, selling prices. The overcharges in question resulted from Quincy's erroneous application of the term "transaction" in establishing its May 15, 1973, selling prices. In considering the Quincy Application, the DOE noted that the FEA had historically granted retroactive exception relief only where an applicant, in addition to satisfying the criteria for all exception requests, showed compelling reasons why exception relief was warranted or demonstrated that it would experience a severe and irreparable injury in the absence of such relief. However, the DOE determined that this standard should not be applied in evaluating requests for exception relief from Ruling 1977-5. The DOE noted that, although the treatment to be accorded variable-price contracts set forth in Ruling 1977-5 was the only one that was consistent with the overall regulatory program, it might have been difficult for Quincy and other firms to arrive at the precise application of the transaction definition to variable-price contracts which was eventually set forth in the Ruling. Consequently, the DOE concluded that, in considering requests for exception relief from Ruling 1977-5, it would examine whether the applicant would have received prospective relief on the grounds of serious hardship or gross inequity if it had filed an exception application in a timely manner.

Quincy claimed that the prices which the firm was permitted to charge as a result of the transaction definition were anomalous in terms of Quincy's general business operations and did not reflect the historic position of the firm prior to the implementation of the price control program. The DOE noted that the FEA had previously held that exception relief could be granted on gross inequity grounds where a firm demonstrated that: (i) unusual or anomalous events occurred during a base period; (ii) those conditions seriously distorted the intended use of the base period for measurement purposes as a normal and customary period of business activity; and (iii) the consequent distortion seriously affected the firm in a significant manner. See *Tenneco Oil Co.*, 2 FEA Par. 83,108 (March 31, 1975). The DOE determined that the present record was insufficient to permit a determination as to whether Quincy satisfied the *Tenneco* standard. Quincy's Application was therefore dismissed without prejudice to a refiling at a later date. In dismissing the Application, the DOE described the material to

be submitted by Quincy in connection with any further Application. This material included data showing historical markups and profitability on sales of No. 6 fuel oil to each customer for which Quincy seeks exception relief. The DOE also stated that it was not clear as to which segment of Quincy's operations the DOE should focus in determining whether exception relief was warranted. The DOE therefore requested that Quincy submit data relating to its markups and profits for each class of purchaser involved, including its institutional customers and its retail customers of No. 6 fuel oil.

SUPPLEMENTAL ORDER

Dorchester Gas Corp.; American Petrofina, Inc., Washington, D.C., DEX-0008, crude oil, refined petroleum products

Dorchester Gas Corp. and American Petrofina, Inc. (Fina) requested that the DOE finalize certain provisions of a Decision and Order which was issued to the firms in proposed form on October 17, 1977. In the previous determination, the DOE proposed to grant the firms various types of administrative relief to facilitate the acquisition by Dorchester of a refinery which Fina owns and operates in Mount Pleasant, Texas. However, the DOE concluded that, in granting exception relief, Dorchester should not be permitted to earn any entitlements under the small refiner bias for crude oil receipts at the Mount Pleasant refinery in excess of the benefits which Fina would earn under the small refiner bias if it did not sell the facility. Subsequent to the issuance of the Proposed Decision and Order, Dorchester and Fina submitted a joint Notice of Objection in which the firms stated that they intended to challenge those aspects of the Proposed Decision and Order which related to the Entitlements Program. In their present submission, Dorchester and Fina indicated that they planned to immediately proceed with the transfer of the Mount Pleasant refinery without awaiting a resolution of the issues which they had raised in their Notice of Objection. The firms therefore requested that the DOE immediately finalize those aspects of the October 17 Proposed Decision and Order which related to the pricing and allocation of crude oil and covered products at the Mount Pleasant facility. After considering the request, the DOE concluded that a number of provisions of the October 17 determination should be issued as an Interim Order. However, the DOE also held that Dorchester and Fina would remain subject to the conditions contained in the Proposed Decision and Order which related to the Entitlements Program, pending the issuance of a final Decision and Order in this matter.

SUMMARY DECISIONS

The following firm filed a Motion for Evidentiary Hearing with the Office of Administrative Review in connection with the DOE's consideration of a Proposed Decision and Order. That motion was granted.

Finnegan's of Virginia, Washington, D.C., DRC-0001

The following firms filed an Application for Stay of a Remedial Order which had been issued to it by the DOE. In considering the stay request, the DOE referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in

which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in these cases did not indicate that the public interest required immediate compliance with the Remedial Orders, the DOE granted the requests for stay pending consideration of the Appeals.

Davison Oil Co., Inc., Mobile, Ala., DRS-0007

Klotzman, Melvin, Pendleton, Jess d.b.a. Victoria Equipment, San Antonio, Tex., DRS-0014

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Asamera Oil, Inc., Washington, D.C., FEE-4854

Dyco Petroleum Corp., Tulsa, Okla., DEE-0057

Maynard Oil Co., Dallas, Tex., FEE-4843

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the DOE Procedural Regulations:

H. & F. Oil Co., Rock Springs, Wyo., DEE-0030

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of
Administrative Review.

FEBRUARY 2, 1978.

[FR Doc. 78-3796 Filed 2-9-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of November 28 through December 2, 1977

Notice is hereby given that during the week of November 28 through December 2, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C., DFA-0020, freedom of information

The law firm of Arent, Fox, Kintner, Plotkin & Kahn appealed from a partial denial by the FEA Information Access Officer of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In its request, Arent sought copies of all DOE documents relating to requests for approval of the use of alternative cost figures for calculating the "Y" factor pursuant to 10 CFR, Part 212. The Information Access Officer denied Arent's request with respect to certain portions of the material on the basis that such information was exempt from mandatory disclosure under Section (b)(5) of the FOIA. In considering the Arent Appeal, the DOE found that the material which was withheld consisted of the recommendations of an FEA employee to his superiors with respect to the disposition of a request to use the alternate "Y" factor to compute maximum allowable prices. The DOE determined that this material was predecisional and advisory in nature and properly fell within the intra-agency memorandum exemption of the FOIA. The DOE further determined that the material which was withheld did not lose its exempt status merely because a final agency decision had been made regarding the issue discussed in the document. The Arent Appeal was consequently denied.

Austral Oil Co., Houston, Tex., FEA-0940, crude oil

Austral Oil Co. filed an Appeal of a Decision and Order which the FEA issued to the firm on July 15, 1976. *Austral Oil Co., Inc.*, 4 FEA Par. 83,004 (July 15, 1976). In that Decision the FEA granted in part Austral's request for an exception from the provisions of 10 CFR, Part 212, Subpart D, and permitted the firm to sell at upper tier ceiling prices certain volumes of crude oil produced from the Ackerly Dean Sand Unit located in Dawson and Martin Counties, Texas. In its Appeal, Austral contended that the FEA should have granted it additional exception relief in order to permit the firm to expand its crude oil recovery operations. Austral asserted that in calculating the level of relief the FEA should have calculated its return on invested capital on an after-tax basis and should have included the cost of capital as an operating expense. In addition, Austral contended that the FEA should have allowed a greater than 15 percent rate of return on the investment, and that the royalty interest owners should have been permitted to benefit directly from exception relief. In considering Austral's Appeal, the DOE concluded that the use of a pre-tax rate of return permits greater uniformity in the consideration of crude oil investment cases and that the cost of capital is not generally considered as an operating cost in investment analyses. The DOE also noted that a 15 percent rate of return was designed to allow Austral a profit on the crude oil investment project and that the firm had presented no material which indicated that such a rate of return was insufficient to induce it to undertake the project. In addition, the DOE also determined that Austral had failed to demonstrate that the royalty interest owners incurred any cost in connection with the proposed investment and consequently no proper basis existed for including the royalty interest owners in any exception relief. The DOE therefore denied

these aspects of Austral's Appeal. However, the DOE did find that there was a distortion of the economics because FEA projections were based on escalating crude oil prices while operating costs were held constant. The DOE therefore granted this portion of Austral's Appeal and recalculated the exception relief on a basis of current crude oil prices and current per well operating costs.

C. C. Operating Co., Victoria, Tex., FRA-1274, crude oil

The C. C. Operating Co. (CCOC) filed an Appeal from a Remedial Order which the Deputy Regional Administrator of FEA Region VI issued to the firm on April 14, 1977. In the Remedial Order, the Regional Office determined that CCOC had improperly classified its State Tract 9 lease as stripper well property and consequently sold crude oil produced from the lease at price levels which exceeded the ceiling prices specified in 10 CFR 212.73. On the basis of these findings, CCOC was directed to refund the overcharges which it had obtained. In considering the CCOC Appeal, the DOE determined that the record indicated that the production of crude oil from the property was not maintained at the maximum feasible rate during 1973. Therefore, the DOE concluded that the Regional Office had acted properly in adjusting the calculations of average daily production to reflect the disruptions which CCOC had experienced in 1973 and that the Regional Office had correctly determined that the lease did not qualify as stripper well property. Accordingly, the CCOC Appeal was denied.

Cotten, Day & Doyle, Washington, D.C., DFA-0025, freedom of information

The law firm of Cotten, Day & Doyle appealed from a denial by the DOE Information Access Officer of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In its Request for Information Cotten sought certain documents relating to an Application for Exception which had been filed with the DOE by Guam Oil and Refining Co. (Gorco). The Information Access Officer found that those portions of the requested documents which had been deleted from copies in the DOE Public Docket Room were exempt from mandatory disclosure under Section (b)(4) of the FOIA. In considering Cotten's Appeal, the DOE determined that some of the information which the Information Access Officer had withheld had previously been made public and therefore should have been released to Cotten. In addition, the DOE determined that several other items of information which had been withheld should be released since the firm submitting that information had notified the DOE that it had no objection to its release. The DOE determined that the remainder of the information requested by Cotten was commercial or financial information dealing with Gorco's operations and that its public release would likely cause substantial harm to the competitive position of the firm. The DOE therefore concluded that this material was properly withheld under Exemption (b)(4) of the FOIA. Cotten's Appeal was accordingly granted in part and denied in part.

Mobil Oil Corp., New York, N.Y., FEA-1269, FEA-1270, natural gas liquids

Mobil Oil Corp. filed Appeals from a consolidated Decision and Order which the

FEA issued to the firm on April 1, 1977. In its Appeals, Mobil requested that the exception relief which had been granted to the firm permitting it to increase the non-product cost passthrough for two of its natural gas processing plants be increased to reflect certain accounting errors in the material which it had furnished in the prior proceeding. Specifically, Mobil claimed that it had erroneously subtracted the service revenues it had received from other firms for compressing natural gas from its own cost of operating the two plants. Mobil asserted that the full cost of its operating expenses should be used in calculating its increased non-product costs. In considering the Mobil Appeals, the DOE concluded that it would be inappropriate to disregard the service revenues since the amount of the unrecovered increase in non-product costs at the two plants would then be overstated by the amount of those revenues. The Mobil Appeals were accordingly denied.

Wayne S. Lockhard & Sons, Inc., Indiana, Pa., FRA-1386, No. 2 fuel oil

Wayne S. Lockhard & Sons, Inc. filed an Appeal from a Remedial Order which the Director of Compliance of FEA Region III issued to the firm on June 17, 1977. In the Remedial Order, the Director of Compliance found that Lockhard had sold No. 2 fuel oil at prices which exceeded the maximum permissible selling prices specified in 10 CFR 212.93. On the basis of this finding, the Remedial Order directed Lockhard to refund the revenues which it had improperly received. In its Appeal, Lockhard contended that the DOE improperly calculated the firm's increased product costs by including in the computation of cost of product in inventory on May 15, 1973 product which Lockhard claims was never commingled in inventory. Lockhard also contended that the Remedial Order erroneously failed to permit the firm to increase its selling prices to reflect a product cost increase which it had experienced as a result of the elimination of a transportation allowance by its supplier. In considering the firm's first contention, the DOE found that prior to the adoption of regulatory amendments on May 1, 1976, a retailer or reseller was required to determine its maximum permissible selling price for a particular product by reference to the increased product costs which it had incurred since May 15, 1973, calculated on the basis of the firm's entire inventory of that product whether or not physically commingled. In considering Lockhard's second contention, the DOE found that the elimination of a transportation allowance by its supplier effectively increased Lockhard's product costs. Consequently, Lockhard was permitted under the Mandatory Petroleum Price Regulations to pass through the cost increase which resulted from the elimination of the transportation allowance. Therefore, there was no basis for Lockhard's claim that it was unable to reflect the loss of the transportation allowance in its selling prices of No. 2 fuel oil. Accordingly, the DOE denied Lockhard's Appeal.

REQUESTS FOR EXCEPTION

City of Long Beach, Calif., Long Beach, Calif., DXE-0071, crude oil

The City of Long Beach, Calif. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief previ-

ously granted to the City and would permit it to sell at upper tier ceiling prices certain quantities of the crude oil produced from Fault Block Unit 2 of the Wilmington Field, located in Long Beach, Calif. (Unit 2). City of Long Beach, Calif., 5 FEA Par. 83,173 (June 6, 1977); City of Long Beach, Calif., 4 FEA Par. 83,212 (December 3, 1976). In considering the Long Beach exception request, the DOE found that the City had continued to experience operating losses at Unit 2 despite the exception relief previously granted. The DOE also found that Long Beach would have no economic incentive to continue its operations at Unit 2 unless the type of exception relief previously approved were extended for an additional six-month period. In view of this situation and on the basis of operating data which Long Beach submitted for the most recently completed six-month period, Long Beach was permitted to sell at upper tier prices 53.14 percent of the crude oil produced from Unit 2 for the benefit of the working interest owners through June 30, 1978.

M. J. Mitchell, Dallas, Tex., FFE-4656, crude oil

M. J. Mitchell filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of the exception relief previously granted to Mitchell and would permit him to sell at upper tier ceiling prices 100 percent of the crude oil produced from the Pickrel Ranch Minnelusa Sand Unit in the Pickrel Ranch Field, Campbell County, Wyo. (the Unit). *M. J. Mitchell*, 5 FEA Par. 83,078 (February 25, 1977); *M. J. Mitchell*, 4 FEA Par. 83,126 (October 1, 1976); and *M. J. Mitchell*, 3 FEA Par. 83,146 (April 2, 1976). In considering the exception request, the DOE found that the firm had continued to incur increased operating costs at the Unit and that in the absence of continued exception relief Mitchell would lack an economic incentive to produce crude oil from the Unit. The DOE also found that permitting Mitchell to sell his share of the crude oil at upper tier ceiling prices would still be an insufficient incentive for continued operation of the Unit. In view of this situation and on the basis of the operating data which Mitchell submitted for the most recently completed six-month period, the DOE concluded that Mitchell should be permitted to sell at market prices 100 percent of the crude oil produced and sold for his benefit from the unit.

Allen K. Trobaugh, Midland, Tex., FFE-4843, crude oil

Allen K. Trobaugh filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to Trobaugh and would permit him to continue to sell at upper tier ceiling prices a portion of the crude oil produced from the No. 1 well in the Bailey Lease, located in Hockley County, Tex. *Allen K. Trobaugh*, 5 FEA Par. 83,150 (May 6, 1977). In considering the exception request, the DOE found that Trobaugh had continued to incur increased operating costs in connection with the No. 1 well and that in the absence of continued exception relief Trobaugh would lack an economic incentive to produce crude oil from the well. In view of this situation and on the basis of the operating data which Trobaugh submitted for the previous six months, the DOE permitted the working in-

terest owners to sell at upper tier ceiling prices 89.09 percent of the crude oil produced from the well for their benefit.

REQUEST FOR MODIFICATION OR RESCISSION

Sun Co., Inc., Dallas, Tex., DMR-0005, natural gas liquids; natural gas liquid products

The Sun Co., Inc. filed an Application for Modification of a Decision and Order which the Office of Exceptions and Appeals of the Federal Energy Administration issued to Sun concerning exception relief for the passthrough of non-product cost increases on sales of natural gas liquids and natural gas liquid products. In support of its Application, Sun argued that its non-product costs were increasing and that the use of data for the most recent fiscal quarter would therefore provide a more accurate indication of Sun's current non-product costs than the period upon which the FEA had based relief in the original Decision. In considering Sun's Application, the DOE found that the firm had failed to demonstrate that the rate of cost increases which it had recently experienced was likely to continue. In addition, the DOE noted that examination of non-product cost data submitted by Sun in a number of exception requests indicated that its per gallon costs varied frequently and had actually declined in half of the cases considered. Accordingly, Sun's Application for Modification was denied.

REQUEST FOR STAY

C. H. Sprague & Son Co., Boston, Mass., DRS-0013, residual fuel oil

C. H. Sprague & Son Co. filed an Application for Stay of certain provisions of a Remedial Order which DOE Region I issued to the firm on November 7, 1977. In the Remedial Order, Region I determined that Sprague had sold residual fuel oil to its customers at prices in excess of the maximum permissible selling prices and directed Sprague to refund the overcharges. Region I stayed the refund provisions of the Remedial Order pending a determination on the merits of and Appeal, but it directed Sprague to submit certain reports to the DOE concerning its purchasers of residual fuel oil during the audit period. Region I stated that it required this information in order to prepare Ancillary Orders to resellers who purchased residual fuel oil from Sprague and who would be required to remit any refunds to their own customers. In considering the stay request, the DOE referred to a Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which the FEA held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appears that the public interest requires immediate compliance with the Remedial Order. The DOE found that the issuance of Ancillary Orders to resellers was necessary in certain cases in order to permit consolidation in an Appeal of common issues arising out of those Orders and the Remedial Order, and to ensure that refunds are promptly made to individuals who have been charged improper prices. The DOE therefore determined that Region I was correct in concluding that the public interest requires Sprague to provide the Office of Enforcement with the data necessary for the issuance of Ancillary Orders. However, the DOE also determined that a portion of the information which the firm was directed to submit was unrelated to the issuance of Ancillary Orders and the

Sprague Application for Stay was therefore granted with respect to those portions of the Remedial Order.

Inger Oil Corp., Inc., Metairie, La., DES-0032, crude oil

Inger Oil Corp., Inc. filed an Application for Stay in which it requested that the DOE defer a reduction in the firm's entitlement sales obligations in the November 1977 Entitlement Notice. The reduction was intended to correct for an error previously made by the firm in reporting its old oil receipts for the month of April 1976. In its Application for Stay, Inger contended that it would experience an irreparable injury if its entitlement sales obligations were reduced. In considering Inger's Application, the DOE noted that the firm had not submitted any financial material whatsoever to support its contention that it would experience an irreparable injury. The firm's Application for Stay was accordingly denied.

TOSCO Corp., Los Angeles, Calif., DES-0033, crude oil

TOSCO Corp. filed an Application for Stay of the provisions of 10 CFR 211.67 (the Entitlements Program) pending a determination by the DOE on an Application for Exception which the firm had filed. The stay request, if granted, would have relieved TOSCO of a portion of its entitlement purchase obligation set forth in the November 1977 Entitlement Notice. In considering the TOSCO request, the DOE found that the firm had demonstrated a substantial likelihood of success on the merits of its exception request. However, the DOE noted that other factors must be considered in evaluating TOSCO's stay request, including the possible adverse effects which a stay of TOSCO's purchase obligation might have on the operations of those small refiners who were eligible to sell entitlements pursuant to the November 1977 Entitlement Notice. In addition, the DOE found that the data which TOSCO presented with respect to its present financial position indicated that the firm would not suffer an irreparable injury if its stay request were denied. The Application for Stay was accordingly denied.

PETITION FOR SPECIAL REDRESS

Standard Oil Co. of Indiana, Chicago, Ill., FSG-0056, motor gasoline

The Standard Oil Co. of Indiana (Amoco) filed a Petition for Special Redress in which it requested that an Assignment Order issued to it by FEA Region V on April 4, 1977 be rescinded. In its Petition Amoco contended that the statement of facts and law contained in the Assignment Order was insufficient as a matter of law. Amoco also argued that the Regional Office had improperly applied the criteria set forth in 10 CFR 205.35(b). In considering the Amoco Petition, the DOE concluded that FEA Region V had sufficiently indicated the factual and legal basis for issuing the Order. In addition, the DOE determined that the Regional Office had properly applied the criteria set forth in 10 CFR 205.35(b). The Amoco Petition for Special Redress was therefore denied.

SUPPLEMENTAL ORDER

Leonard E. Belcher, Inc., Springfield, Mass., DRX-0009, No. 2 fuel oil

Leonard E. Belcher, Inc. filed 28 Interrogatories in connection with an Appeal from

a Remedial Order which the firm had submitted. In the present submission, Belcher sought information relating to the internal procedures of the DOE Office of Administrative Review and information concerning any oral or written communication between the Office of Administrative Review and other DOE employees during the course of the Belcher Appeal proceeding. In considering Belcher's request for discovery, the DOE observed that the DOE Administrative Procedures and Sanctions Regulations, 10 CFR, Part 205, contain no formal provision for discovery by a party in the course of an administrative appeal. (Editor's Note: This provision has subsequently been amended, see 10 CFR 205.198). In addition, the DOE determined that the information which the firm requested was unrelated to Belcher's challenge to the substantive findings and conclusions contained in the Remedial Order. Accordingly, the Belcher request was denied.

SUMMARY DECISIONS

The following firms filed Applications for Stay of Remedial Orders which had been issued to them by the DOE. In considering the stay requests, the DOE referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in these cases did not indicate that the public interest required immediate compliance with the Remedial Orders, the DOE granted the requests for stay pending consideration of the Appeals.

Ernest E. Allerkamp, Denver, Colo., DRS-0042

Ruthven, Inc., Seminole, Okla., DRS-0040

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Citadel Corp., and Belvoir Terminal Corp., Washington, D.C., DOP-0001

The following submissions were dismissed after the applicants repeatedly failed to respond to requests for additional information:

Eddy Refining Co., Washington, D.C., FEE-4364

Kenwance Oil Co., Tulsa, Okla., FEE-4797

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a

commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of
Administrative Review.

FEBRUARY 2, 1978.

[FR Doc. 78-3797 Filed 2-9-78; 8:45 am]

[3128-01]

SMALL REFINER BIAS UNDER THE ENTITLEMENTS PROGRAM

Inquiry as to Independent Study

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Inquiry.

SUMMARY: The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") gives notice of the availability of an independent report it has commissioned on an analysis of the appropriate level for the small refiner bias under the entitlements program. The report generally concludes that the current bias level may compensate many refiners below the 50,000 barrel per day (B/D) crude run level beyond the apparent extent of their diseconomies of scale relative to larger refiners processing typical crude oils. The ERA will hold a public hearing and receive written comments concerning the analysis set forth and the findings of this report.

DATES: Comments by March 7, 1978, 4:30 p.m.; requests to speak by February 24, 1978, 4:30 p.m.

HEARING DATES: Washington hearing: March 6 and 7, 1978, 9:30 a.m. Dallas hearing: March 9, 1978, 9:30 a.m. San Francisco hearing: March 9, 1978, 9:30 a.m.

ADDRESSES: All comments to: Public Hearing Management, Room 2313, Department of Energy, 2000 M Street NW., Box RN, Washington, D.C. 20461. Copies of Small Refiner Bias—Final Report available at the Office of Management Operations, Room B210, 2000 M Street NW., Washington, D.C. 20461. Department of Energy, 2626 West Mockingbird Lane, Dallas, Tex. 75235; Department of Energy, Third Floor, 111 Pine Street, San Francisco, Calif. 94111.

REQUESTS TO SPEAK: Washington hearing: Public Hearing Management, Room 2313, Department of Energy, 2000 M Street NW., Box RN, Washington, D.C. 20461. Dallas hearing: Department of Energy, Attention: Arlene Millard, 2626 West Mockingbird Lane, Dallas, Texas 75235. San Francisco hearing: Department of Energy, Attention: R. Laffel, Third Floor, 111 Pine Street, San Francisco, Calif. 94111.

HEARING LOCATIONS: Washington hearing: Room 3000A, 12th and Penn-

sylvania Avenue NW., Washington, D.C. 20461. Dallas hearing: Department of Energy Training Room 250, 2626 West Mockingbird Lane, Dallas, Tex. 75235. San Francisco hearing: Federal Courthouse, Courtroom 14, 7th and Mission Street, San Francisco, Calif. 94111.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), 2000 M Street NW., Room 2214, Washington, D.C. 20461, 202-254-5201.

Ed Vilade (Media Relations), 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833.

Mary B. Jones (Regulations and Emergency Planning), 2000 M Street NW., Room 2222, Washington, D.C. 20461, 202-254-3234.

Douglas McIver (Entitlements Program Office), 2000 M Street NW., Room 6128I, Washington, D.C. 20451, 202-254-8860.

Fred Wolgel (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 7134, Washington, D.C. 20461, 202-566-2454.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. History of the Small Refiner Bias
- III. Availability of Report
- IV. Request for Comments
- V. Public hearing and Written comment Procedures

I. INTRODUCTION

The DOE's domestic crude oil allocation ("entitlements") program provides for the issuance to small refiners of additional entitlements over and above the number of entitlements issued to all refiners generally with respect to their crude oil runs to stills. Under the monthly entitlement calculations, each refiner is issued a number of entitlements equivalent to the result of application of the domestic crude oil supply ratio to the volume (in barrels) of that refiner's crude oil runs to stills for that month. Under 10 CFR 211.67(e), which provides for the small refiner bias, small refiners (defined in § 211.62 as those having a refinery capacity not exceeding 175,000 B/D) are issued bias entitlements in addition to those issued by application of the domestic crude oil supply ratio. The number of additional entitlements issued under the bias is dependent on the level of the particular small refiner's crude oil runs in the month involved. The per barrel bias is highest at crude run levels of up to 10,000 B/D and declines as the small refiner's crude run volume increases over 10,000 B/D. Above the 175,000 B/D crude run level no bias entitlements are issuable. The general effect of the small refiner bias is to lower crude

costs for small refiners, by either permitting them to sell a greater number of entitlements or requiring them to purchase fewer entitlements with respect to their crude oil receipts.

II. HISTORY OF THE SMALL REFINER BIAS

The initial entitlements program notice of proposed rulemaking issued by the Federal Energy Administration ("FEA") on August 28, 1974 (39 FR 31650, August 30, 1974) solicited comments on the desirability of providing for a small refiner bias but offered no specific regulatory provision therefor.

Provision for a small refiner bias first appeared in FEA's further notice of proposed rulemaking issued on November 7, 1974 (39 FR 39740, November 11, 1974). The sliding scale bias proposed thereby provided that each small refiner would receive additional entitlements as a percentage of its crude runs and that the number of entitlements so issued would be greater

at the lower run levels. The rationale for providing favorable treatment for small refiners was based on FEA's belief that a bias was necessary to compensate for the higher operating costs and proportionately greater capital expenditure requirements that small refiners experienced relative to larger refiners, and on FEA's belief at that time that to remain competitive many small refiners priced their products below those marketed by major branded refiners. The bias, therefore, was designed principally to ensure the competitive viability of the small refiner segment of the petroleum industry. The method initially proposed by FEA to favor small refiners was based on the sliding scale used for issuances of oil import tickets under the Mandatory Oil Import Program when ticket values were in the \$1 per barrel range.

The final rule adopting the entitlements program, which was issued on November 29, 1974 (39 FR 42246, December 4, 1974), reflected FEA's affirmation of the need for a small refiner

bias but concluded that, while its reference to the historic treatment afforded under the Oil Import Program was valid, the benefits proposed were insufficient to ensure the competitive viability of small refiners. Accordingly, the rule adopted contained small refiner bias provisions that related the incremental entitlement issuances up to the first 30,000 B/D of crude runs to the maximum economic preferences granted under the Oil Import Program with respect to the PAD District V ticket issuances.

On December 20, 1974, FEA adopted corrective amendments (39 FR 44710, December 27, 1974) to the entitlements program, which included technical changes relating to the small refiner bias provisions, since FEA had determined that the value of import tickets issuable to small refiners had been incorrectly computed. These corrective amendments adjusted bias entitlements issuances to the following levels, which were applicable through March 1976.

VALUE OF SMALL REFINER BIAS PRIOR TO APRIL 1976

	Number of bias entitlements	Daily value of bias entitlements ¹	Per barrel value of bias entitlements ¹
Crude runs:			
10,000	1,238	\$10,859.18	\$1.07
30,000	1,690	14,550.90	.49
50,000	1,567	13,491.87	.27
100,000	1,258	10,831.38	.11

¹Based on the November 1977 entitlement price of \$8.61.

On December 22, 1975, the Energy Policy and conservation Act, Pub. L. 94-163 (the "EPCA") became law. Section 403 of the EPCA exempted refiners whose refining capacity did not, on January 1, 1975 or thereafter, exceed 100,000 barrels per day from entitlement purchase requirements as to the first 50,000 barrels per day of their inputs or receipts, or both. On December 31, 1975 (41 FR 1044, January 6, 1976), FEA adopted Special Rule No. 6 for Subpart C (the "special rule") on an emergency basis to implement these exemption requirements of the EPCA. The special rule exempted all qualified small refiners from any purchase requirements they would otherwise have as to the first 50,000 barrels per day of their crude runs. For small refiners having run levels in excess of 50,000 barrels per day, the special rule exempted a portion of the entitlement purchase requirements they would otherwise have.

Section 455 of the EPCA generally permitted FEA to modify the small refiner purchase exemption (as was implemented by the special rule) where FEA determined that the exemption resulted in an unfair economic or competitive advantage for its beneficiaries with respect to other small refiners or otherwise seriously impaired FEA's ability to provide for the attainment of the objectives of the EPAA. Any FEA modification of the exemption, however, was subject to review by both Houses of Congress under the procedures set forth in section 551 of the EPCA, and would become effective only if neither House disapproved the modification within 15 days of submission.

On February 28, 1976 (41 FR 9391, March 4, 1976) FEA stated its initial determination that the full exemption as in effect under the special rule had certain unfair effects, and it proposed modifications to the exemption. As a

part of that proceeding, FEA invited comments on whether the exemption should be modified such that both small refiner entitlement purchasers and sellers would receive equivalent benefits. FEA suggested that such a modification could be accomplished by eliminating the exemption for small refiner entitlement purchasers, and by increasing the amount of the bias to all small refiners, thereby keeping such refiners on the same competitive basis.

On May 12, 1976 (41 FR 20392, May 18, 1976), FEA confirmed its determination that the exemption had been operating to seriously impair its ability to attain the objectives of the EPAA and was resulting in an unfair economic or competitive advantage for certain small refiners with respect to other small refiners. Accordingly, FEA modified the exemption by revoking the special rule and increased the

amount of additional entitlements issuable to all small refiners under the general regulatory provisions providing for the small refiner bias. These

amendments were not subsequently disapproved by either House of Congress under the procedures provided by the EPCA and thus became effective

with respect to entitlement issuances for April 1976.

These amendments increased the value of the bias to its current level;

VALUE OF CURRENT SMALL REFINER BIAS²

	Number of bias entitlements	Daily value of bias entitlements	Per barrel value of bias entitlements
Crude Runs:			
10,000	2,288	\$19,699.68	\$1.97
30,000	3,123	26,889.03	.90
50,000	2,079	17,900.19	.36
100,000	1,258	10,831.38	.11

²Based on the November 1977 entitlement price of \$8.61.

With respect to firms with volumes of crude oil runs to stills of less than 100,000 B/D, the benefits at the 10,000 B/D level increased by approximately an additional 2 cents per gallon and by declining additional amounts as the refiner's volume of crude oil runs increases. At the 100,000 B/D and higher run levels, no increase was provided for.

On February 10, 1977, FEA tentatively concluded that the rationale underlying the small refiner bias did not appear to support the issuance of bias entitlements for processing agreements at other refineries, and accordingly proposed to eliminate issuances of all bias entitlements with respect to processing agreements for the account of small refiners (42 FR 9394, February 16, 1977). On April 30, 1977, FEA affirmed its tentative conclusion that there was no justification for the issuance of bias entitlements for processing agreements outside a small refiner's plant, and adopted the final rule essentially as proposed, effective for June 1977 crude oil runs to stills.

III. AVAILABILITY OF REPORT

The ERA has commissioned an independent analysis to provide data and information to assist in our evaluation of the small refiner bias.¹ Copies of

¹Effective, October 1, 1977, all functions previously performed by the FEA were transferred to the Department of Energy (DOE) pursuant to the Department of Energy Organization Act (DOE Act, Pub. L. 95-91) and Executive Order 12009 (42 FR 46267, September 15, 1977). In DOE Delegation Order No. 0204-4, the Secretary of Energy delegated to the Administrator of the Economic Regulatory Administration (ERA) the authority previously exercised by FEA to take action with regard to the allocation and pricing of crude oil.

the report may be obtained from the Office of Management Operations, Room B210, 2000 M Street NW., Washington, D.C. 20461. A limited number of copies are also available in the following regional offices: Department of Energy, 2626 West Mockingbird Lane, Dallas Texas 75235; Department of Energy, Third Floor, 111 Pine Street, San Francisco, Calif. 94111.

The report contains an analysis of plant economies of scale based on a detailed economic and engineering analysis of a large number of possible refinery operations, focusing primarily on differences in refinery size, refinery type and complexity, and the effect of different crude quality and cost combinations on operating costs and margins. A detailed engineering and economic analysis of 69 possible refining operations ranging in size from 1,000 B/D to 250,000 B/D is included. For each of the cases there is an analysis of crude oil costs, investment costs, operating costs, product realizations, and operating margins before and after capital charges. The analysis also examines crude oil acquisition costs and product realizations to determine if there is a general relationship between these factors and refinery size. In addition, the report considers the effects of other factors such as access to special marketing situations, the variations in supply logistics of individual companies, and the lower initial investment costs required for refineries built from used equipment or by reactivating refineries.

The analysis of crude oil acquisition costs contained in the report suggests that substantial disparities exist between the post-entitlement adjusted prices of some foreign and domestic

crude oils of similar quality. The report also indicates that the entitlements program has not fully equalized prices of domestic crude oils of the same quality but of different pricing composition. However, the analysis did not show significant differences in average crude oil acquisition costs as function of company of refinery size. Similarly, analysis of product realizations shows that, for most products, the average of small refiners' wholesale and rack prices are not significantly lower than those of large refiners.

The cost and margin analyses for the various refining operations yield as many results as there are cases, but in a comparison of the most typical U.S. refineries processing equivalent cost crude oils, and realizing similar product netbacks the report indicates that:

Present bias levels are approximately correct from 175,000 B/D through 50,000 B/D.

Growing overcompensation begins at about 50,000 B/D.

At 10,000 B/D the bias can be twice the operating margin disadvantage.

Slight undercompensation may occur below 3,000 B/D but this is probably offset for many refiners in this size range by their access to special conditions such as exclusive markets. In addition, margins calculated using investment costs for new grass roots refineries of a basically constant standard of construction may be understated in that entry at very small size levels is usually accomplished with used equipment or reactivation of a shut-down refinery.

To the degree that a bias is necessary to compensate for manufacturing

diseconomies of scale, a separate bias calculation for individual facilities under common ownership would appear to be justified.

IV. REQUEST FOR COMMENTS

The ERA seeks comments from interested parties on the report, including comments on the factual bases used for the analysis, the method of analysis, and its results. Views and comments on conclusions which are drawn in the report are also solicited. Anyone that has prepared an analysis of the bias is requested to submit copies of their analysis for review by the ERA. In addition, the ERA solicits specific comments on whether any further downstream marketing analysis should be undertaken.

The ERA also solicits specific comments on whether, in light of the report and any additional considerations commenters may consider relevant, the small refiner bias should be altered, and if so, the appropriate manner in which the bias should be altered at the various crude run levels. Following receipt of comments, the ERA will evaluate the report, the comments received, and the existing bias provisions to determine what further actions should be taken concerning this subject.

V. PUBLIC HEARING AND WRITTEN COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this inquiry by submitting data, views, or arguments with respect to the issues set forth in this notice. Comments should be submitted by 4:30 p.m., e.s.t., March 7, 1978, to the address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope with the designation "Small Refiner Bias Inquiry," Box RN. Fifteen copies should be submitted. All comments received by the ERA will be available for public inspection in the ERA Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to that determination.

B. PUBLIC HEARING

1. *Procedure for Request to Make Oral Presentation.* The time and place for the hearing is indicated in the "Dates" and "Addresses" section of this notice. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the first business

day following the date of the hearing shown above.

If you have an interest in, or represent a group or class of persons who have an interest in the small refiner bias, you may make a written request for an opportunity to make an oral presentation. The dates and places for requests to speak are indicated in the "Dates" and "Addresses" sections of this notice. You should be prepared to describe the interest concerned and, if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest, and to give a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., on February 28, 1978, and will be required to submit 100 copies of your statement to the address indicated in the "Addresses" section of this notice before 9:30 a.m., e.d.t. on March 3, 1978.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the Hearing, and there will be no cross-examination of persons presenting statements by other interested parties. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 9:30 a.m., e.s.t., March 3, 1978. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcripts,

will be retained by the ERA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcripts from the reporter.

A transcript of the Dallas hearings will be made available for inspection at the Department of Energy, 2626 West Mockingbird Lane, Dallas, Tex. 75235. A transcript of the San Francisco hearing will be made available for inspection at the Department of Energy, Third floor, 111 Pine Street, San Francisco, Calif. 94111.

Issued in Washington, D.C., February 5, 1978.

DAVID J. BARDIN,
Administrator, Economic
Regulatory Administration.

[FR Doc. 78-3793 Filed 2-7-78; 3:24 pm]

[6740-02]

[Docket No. ER78-197]

CENTRAL TELEPHONE & UTILITIES CORP.

Notice of Filing of Addendum

FEBRUARY 3, 1978.

Take notice that Central Telephone & Utilities Corp. on January 30, 1978, tendered for filing an addendum dated December 15, 1977, to the contract between Central Telephone & Utilities Corp. and NCK Electric Cooperative, Inc., dated October 18, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 21, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3767 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. CP78-172]

EL PASO NATURAL GAS CO.**Notice of Application****FEBRUARY 3, 1978.**

Take notice that on January 24, 1978, El Paso Natural Gas Co. (Applicant), P.O. Box 1492, El Paso, Tex. 79978, filed in Docket No. CP78-172 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to implement the Barker Dome Storage project, and authorizing the transportation, on a best efforts basis, of natural gas in interstate commerce for Western Gas Interstate Co. (WGI), all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Applicant faces a potential peak day east-of-California (EOC customers) Priority 1 and 2 curtailment in the 1978-79 winter heating season of approximately 297,000 Mcf, after full use of the Rhodes Reservoir Storage Project and Clay Basin Interim arrangements as presently authorized. It is stated that the Barker Dome Storage Project would materially assist Applicant in reducing the potential peak day shortfall of supply necessary to meet the projected EOC Priority 1 and 2 requirements.

It is indicated that the Barker Dome Dakota Reservoir covers an area of approximately 5,600 acres located on the Ute Mountain Tribe Indian Reservation in north central San Juan County of New Mexico and southern La Plata County of Colorado; approximately 17 miles north of Applicant's San Juan River Plant in the San Juan Basin. It is further indicated that of the 16 wells which have been drilled and completed in the Dakota Reservoir, production is now being obtained from only 5 of the wells at a total daily delivery rate of approximately 1,100 Mcf.

Applicant proposes to plug and abandon the existing 16 wells and requests authorization to construct and operate the following facilities:

1. INJECTION/WITHDRAWAL WELLS

30 injection and withdrawal wells, including wellhead and dehydration facilities, consisting of 27 wells located in San Juan County, N. Mex., and 3 wells located in La Plata County, Colo. Wellhead dehydration units will be operated on the withdrawal phase only.

2. OBSERVATION WELLS

9 observation wells, consisting of 5 wells located in San Juan County, N. Mex., and 4 wells located in La Plata County, Colo.

3. INJECTION AND WITHDRAWAL PIPELINE**A. STORAGE TRUNK PIPELINE**

Approximately 19.6 miles of 20-inch O.D. x 0.344-inch w.t., 16-inch O.D. x 0.250-inch w.t. and 10- $\frac{3}{4}$ -inch O.D. x 0.188 w.t. pipeline, with appurtenances, commencing at Applicant's San Juan River Plant in San Juan County, N. Mex., and terminating in the north portion of the Barker Dome gas field in La Plata County, Colo.

B. LATERAL AND WELL-TIE PIPELINE

Approximately 9.8 miles of lateral and well-tie pipeline consisting of approximately 1.2 miles of 16-inch O.D. x 0.325-inch w.t., 3.7 miles of 10- $\frac{3}{4}$ -inch O.D. x 0.188-inch w.t., and 4.9 miles of 4- $\frac{1}{2}$ -inch O.D. x 0.156-inch w.t. pipeline, with appurtenances, all located in La Plata County, Colo., San Juan County, N. Mex.

4. MEASUREMENT FACILITIES

A dual direction flow 20-inch O.D. check meter, with appurtenances, located on the proposed 20-inch O.D. storage trunk pipeline, within Applicant's San Juan River Plant boundary, San Juan County, N. Mex.

5. BARKER RESERVOIR COMPRESSOR STATION

Two 3,830 (ISO) horsepower Centaur CST-4000 gas turbine-driven centrifugal compressor units, with appurtenances, located within Applicant's San Juan River Plant boundary, in San Juan County, N. Mex.

In addition to the wells, pipeline, metering and compressor facilities specifically described above, Applicant proposes to construct and operate, under authority of §2.55(a) of the Commission's General Policy and Interpretations, (18 CFR 2.55(a)) those facilities described as follows:

1. SAN JUAN RIVER PLANT PIPING AND COOLING FACILITIES

Approximately 0.2 miles of 16-inch O.D. and 10- $\frac{3}{4}$ -inch O.D. piping, with appurtenances, including two (2) air-gas heat exchangers, located within Applicant's San Juan River Plant boundary, San Juan County, N. Mex.

2. CENTRAL DEHYDRATION UNIT

A 124,000 Mcf per day capacity central dehydration unit is located within applicant's San Juan River Plant boundary, in San Juan County, N. Mex.

It is indicated that the total estimated cost of Applicant's proposed project facilities is \$19,367,796, which cost Applicant proposes to finance through working funds, supplemented, as necessary, by short-term borrowing.

Applicant indicates that it would inject approximately 14,300,000 Mcf of

natural gas into the Barker Dome Dakota Reservoir during the month of August and September 1978, which, with the present 8,100,000 Mcf of natural gas remaining reserves in-place, would fill the Dakota Reservoir to its indicated maximum storage capacity. This inventory would consist of 10,100,000 Mcf of working gas and 12,300,000 Mcf of cushion gas, it is stated. Applicant states that storage injection rates would range from 266,000 Mcf per day, and storage withdrawal rates would range from 124,000 Mcf to 59,000 Mcf per day, at the design pressure.

Applicant states that in order to secure the Barker Dome Dakota Reservoir for use by it as a storage reservoir, mutually satisfactory arrangements have been negotiated among Applicant, the Ute Mountain Ute Tribe of the Ute Mountain Ute Reservation, Supron Energy Corp. (Supron), Southern Union Gathering Co. and WGI. Applicant further states that these arrangements achieve several principal objectives: first, Applicant is vested by the Mountain Utes and Supron with all contractual rights necessary to construct facilities and operate the Dakota Reservoir as a storage project; second, Supron would not be economically disadvantaged by Applicant's use of the reservoir as an interstate storage project; third, the gas distribution divisions of Southern Union through WGI, would continue to receive the same quantity of gas which would have been received had the storage reservoir not been made available to Applicant for use as an interstate storage project.

It is indicated that Applicant has acquired the rights necessary to construct facilities and operate the Barker Dome Storage Project through two agreements, the gas storage lease agreement, and the sublease agreement. It is further indicated that on September 12, 1977, Applicant, the Mountain Utes and Supron executed the gas storage lease agreement, and that pursuant to such agreement Mountain Utes grant Applicant the right to establish, maintain and operate a gas storage project in the Barker Dome Dakota Reservoir underlying the Mountain Utes lands. The right is granted for a term of ten years and for so long thereafter as Applicant continues to use the Barker Dome Dakota Reservoir as a gas storage project, it is said. Applicant states that in consideration for such right, it would pay the Mountain Utes an annual rental of \$28,960 for the subsurface storage rights, $\frac{1}{4}$ cent for each Mcf of gas injected and 1 $\frac{1}{4}$ for each Mcf of gas withdrawn from the storage reservoir (including native or indigenous gas). Applicant indicates that the gas storage lease agreement amends in certain respects the provision of the existing

oil and gas mining leases between the Mountain Utes, as lessor, and Supron, as Lessee, insofar as they pertain to the Barker Dome Dakota Reservoir. Applicant, the Mountain Utes, and Supron stipulate that the Barker Dome Dakota Reservoir contains 4,000,000 Mcf of recoverable indigenous gas (at 15.025 psia and 60° F) as of the date of the above said agreement. It is indicated that Applicant's operation of the Barker Dome Dakota Reservoir as a storage reservoir would be inconsistent with Supron's rights and obligations under the oil and gas mining leases to produce gas from the reservoir and pay royalty to the Mountain Utes on the basis of such production, the Mountain Utes and Supron have agreed for purposes of determining royalty under the Oil and Gas Mining leases that the stipulated 4,000,000 Mcf of recoverable indigenous gas would be deemed to be produced from the Barker Dome Dakota Reservoir during the 10-year period beginning September 12, 1977, at the rate of 100,000 Mcf per each calendar quarter. It is further stated that to the extent that the recoverable indigenous gas continues to be produced between September 12, 1977, and the actual plugging and abandoning of the producing wells, royalty payments would be calculated on the basis of the 100,000 Mcf per calendar quarter or actual production, whichever is higher.

The application states that the Sublease Agreement, the second agreement by which Applicant has acquired the rights necessary to implement the Barker Dome Storage Project, was executed January 20, 1978, between Applicant and Supron, which agreement resolves the basic inconsistency between Supron's rights under the oil and gas mining leases to explore, drill, produce and market oil and gas from the Barker Dome Dakota Reservoir and Applicant's acquired rights under the gas storage base agreement to utilize under the Barker Dome Dakota Reservoir for natural gas storage.

It is indicated that Supron is selling production from the aforementioned 5 wells completed in the Barker Dome Dakota Reservoir in intrastate commerce to Gathering Co. in accordance with the provisions of a natural gas purchase contract dated January 1, 1961, as supplemented and amended between Southern Union Production Co. (now Supron) as Seller, and Gathering Co. (as assignee from Southern Union Gas Co.) as Buyer. It is further indicated that by August 1, 1978, the base sales rate under this contract would be \$1.47 per Mcf at 15.025 psia and 60° F. The application states that Supron has a contractual expectancy of a stream of revenue into the future from the sale of Barker Dome Dakota

Reservoir gas, as produced, to Gathering Co., and that Southern Union, through Gathering Co., has a contractual expectancy of a supply of gas into the future from Supron. It is stated that that future recoverable supply of gas has been stipulated by Supron, Applicant, and the Mountain Utes (for the purpose of royalty calculations) to be a total of 4,000,000 Mcf at 15.025 psia as of September 12, 1977. Applicant indicates that Supron is willing to assist Applicant by permitting implementation of the Barker Dome Storage Project as long as it does not result in an economic disadvantage to Supron. It is stated that Southern Union desires to assist Applicant in implementing the storage project through arrangements which would assure that quantities of gas equivalent to the stipulated 4,000,000 Mcf recoverable reserves in the Barker Dome Dakota Reservoir continues to flow to Southern Union.

The application states that the arrangements among the parties accomplish these objectives. It is further stated that Gathering Co.'s present right to buy Barker Dome Dakota Reservoir gas production from Supron under the 1961 natural gas purchase contract would be converted to a sale and purchase in interstate commerce by assignment to WGI (another Southern Union subsidiary) and the amendment thereto which provides that the point of delivery would be at either the existing Barker Dome Dakota Reservoir wells or at other mutually agreeable points where Applicant would make the gas available for Supron's account. The 1961 natural gas purchase contract has also been amended to provide that Supron would collect the applicable interstate base rate for its sale of the gas to WGI, it is said. It is indicated that the parties intend that the transition of the present intrastate sale by Supron to Gathering Co. to an interstate sale to WGI would occur when Applicant commences the injection of natural gas into Barker Dome Dakota Reservoir on August 1, 1978.

Applicant indicates that those deliveries would be made by it for Supron's account to WGI (actually to its designee, Gathering Co.) under the 1961 natural gas purchase contract, as assigned and amended, and that after the equivalent of the 4,000,000 Mcf has been delivered for Supron, the sublease agreement provides that Supron would assign the oil and gas mining leases to Applicant insofar as they related to the Barker Dome Dakota Reservoir.

It is indicated that Applicant and Gathering Co. are parties to a composite supplemental agreement to a gas purchase agreement dated May 1, 1975, which composite agreement is on file with the Commission as Appli-

cant's special X-13 Rate Schedule, and which provides that Gathering Co. would gather and redeliver to Applicant quantities of Applicant's gas from certain San Juan wells attached to Gathering Co.'s gathering system. It is stated that commencing with the injection of gas into the Barker Dome Dakota Reservoir, Applicant would utilize gas from these wells to perform its obligation under the sublease agreement to deliver 1,120 Mcf per day of natural gas to WGI for Supron's account until the equivalent of the stipulated 4,000,000 Mcf Barker Dome Dakota Reservoir recoverable indigenous gas has been delivered. This arrangement has been contractually accomplished by an amendment to the composite agreement between gathering company and Applicant dated January 20, 1978, which amendment provides that the first 1,120 Mcf per day delivered to Gathering Co. each day from certain wells shall be deemed delivered to Gathering Co. for the account of WGI until the aggregate stipulated quantity has been so delivered.

It is stated that in consideration for Southern Union's assistance in the arrangements enabling Applicant to acquire the rights necessary to utilize Barker Dome Dakota Reservoir as a storage project, and cognizant of Southern Union's desire to make the equivalent of the Barker Dome Dakota Reservoir gas production available to its gas distribution divisions, Applicant would transport in interstate commerce up to 1,120 Mcf of natural gas per day on a best efforts basis for WGI's account. Applicant states that this arrangement is set forth in a gas transportation agreement between it and WGI dated January 20, 1978, which is set forth herein as Applicant's proposed initial special transportation Rate Schedule T-12. Applicant further states that the gas to be transported would be received from Gathering Co. for the account of WGI at one or both of two existing points of interconnection between the facilities of Applicant and Gathering Co. in the San Juan Basin and the points of delivery by Applicant after transportation would be at various of the existing points of delivery from Applicant's system to Southern Union's gas distribution divisions in the States of Arizona, New Mexico and Texas. The aforementioned points of receipt in the San Juan Basin of the gas to be transported for WGI are presently utilized by Applicant and Gathering Co. under exchange agreements on file and in effect as Gathering Company's FERC Gas Rate Schedule No. 1.

It is indicated that Applicant's charges to WGI for the transportation of its gas in interstate commerce would be the applicable rates in effect from time to time as reflected in Applicant's Third Revised Volume No. 2 of its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3768 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. ER78-190]

FLORIDA POWER & LIGHT CO.

Proposed New Delivery Point

FEBRUARY 3, 1978.

Take notice that on January 17, 1978, Florida Power & Light Co. (FP&L) tendered for filing an Exhibit A which provides for a new delivery point to Clay Electric Cooperative, Inc.

The proposed effective date is the date on which service commences at the new delivery point, estimated to be February 1, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE.,

Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3769 Filed 2-9-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

GAS POLICY ADVISORY COUNCIL

Meeting

Agenda; meeting of Supply-Technical Advisory Task Force-Nonconventional Natural Gas Resources Sub-Task Force I: Methane in Water, Conference Room 3200 (North Building), Federal Energy Regulatory Commission, Union Plaza Building, 941 North Capitol Street NE., Washington, D.C. 20426, March 2, 1978, 9 a.m.

Presiding: Thomas Jennings, Petroleum Engineer, Gas Policy Advisory Council-Coordinating Representative and Secretary.

- (1) Call to order—Thomas Jennings.
- (2) Discussion of Sub-Task Force progress to date—Dr. John Harbaugh.
- (3) Assignment of work and completion dates to Sub-Task Force members.
- (4) Other business.
- (5) Adjournment—Thomas Jennings.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the Committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3765 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. E-7561]

HOLYOKE WATER POWER CO. ET AL

Filing of Settlement Agreement

FEBRUARY 3, 1978.

Public notice is hereby given that on December 30, 1977, the Commonwealth of Massachusetts filed with the Federal Energy Regulatory Commission (FERC) a motion for approval of

a proposed settlement agreement in the above-captioned proceeding. New England Power Co. is the licensee for three hydroelectric projects on the Connecticut River—Projects No. 1904 (Vernon), No. 1855 (Bellows Falls), and No. 1892 (Wilder). Related settlement agreements have been previously approved with Holyoke Water Power Co. for Project No. 2004 and Western Massachusetts Electric Co. for Project No. 1889, both downstream on the Connecticut River. The parties to the instant agreement are New England Power Co.; the States of Connecticut, Massachusetts, New Hampshire, and Vermont; Department of the Interior, Environmental Defense Fund (EDF); Western Massachusetts Public Interest Research Group (PIRG); For Land's Sake (FLS); and Trout Unlimited (Trout).

The proposed agreement provides a schedule for the installation by licensee of fish passage facilities at its three projects in order to facilitate re-establishing the runs of Atlantic salmon and American shad to the Connecticut River. The licensee has the responsibility for constructing the facilities as well as for their operation and maintenance. An operating schedule will be established after fish migration over Holyoke Dam in reasonable numbers is established. The agreement does not provide for the construction of fishways at Bellows Falls and Wilder for American shad alone, nor does it provide for specific downstream fish migration facilities. The agreement provides that the projects shall be operated to provide additional discharges, over and above, but not duplicative of, those necessary to maintain 1,200 cfs minimum stream flow past Vernon now being provided for Vermont Yankee Nuclear Power Corp., to provide a minimum instantaneous flow of 0.20 cubic feet per second per square mile of drainage area through each of the Projects, subject to Commission approval or modification. In addition the agreement provides that all outstanding issues relating to erosion raised by EDF, PIRG, FLS and Trout will be satisfied by the inclusion of a standard license article in each of the licenses for the three projects. Said article provides generally that licensee will be responsible for, and take reasonable measures to prevent, soil erosion and stream sedimentation. The settlement agreement is expressly subject to the jurisdiction of the FERC.

Any person desiring to make any protest or comment with reference to the settlement agreement should file a letter of protest or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 13, 1978. Protests or comments will be considered by the Commission in determining the appropriate action

to be taken. A copy of the proposed settlement agreement is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3770 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. CP78-174]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Notice of Application

FEBRUARY 3, 1978.

Take notice that on January 25, 1978, Kansas-Nebraska Natural Gas Co., Inc. (Applicant), P.O. Box 608, Hastings, Nebr. 68901, filed in Docket No. CP78-174 an application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render natural gas service pursuant to an agreement dated October 27, 1977, between Applicant and Michigan Wisconsin Pipe Line Co. (Mich Wis), and to construct and operate certain facilities in Hemphill County, Tex. necessary to accomplish delivery of natural gas under a proposed exchange arrangement, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that pursuant to the agreement dated October 27, 1977, between Applicant and Mich Wis, Mich Wis would deliver natural gas to Applicant at an initial delivery point in Fremont County, Wyo., and that Applicant would purchase a portion of the subject gas delivered to it by Mich Wis and gather, transport, and redelivery by exchange the balance thereof, to a proposed interconnection of Applicant's system and Mich Wis' system in Hemphill County, Tex.

Applicant proposed to install a tap and valve at the proposed redelivery point in Hemphill County, Tex., at an estimated total cost of \$7,000 which cost is proposed to be financed out of current working capital or certain bank loans.

It is stated that if Applicant elects to purchase the natural gas which Mich Wis has purchased from a non-affiliated producer, Applicant would pay Mich Wis a price on the same terms and conditions as Mich Wis's purchase from such producer, and that if Applicant elects to purchase gas which is produced by Mich Wis or by Mich Wis's subsidiary, Applicant would pay a price applicable to FERC area price and would include all adjustments, taxes and other charges permitted or prescribed for such price.

Applicant indicates that Mich Wis would pay Applicant a transportation

fee equal to 18.74 cents for each Mcf of gas redelivered by Applicant to Mich Wis, and that Mich Wis would pay Applicant a gathering fee which would be determined for each well on an individual basis, which gathering fee would be determined each month by multiplying the total cost of service of the facilities installed by Applicant to connect each well by the proportion of the total gas delivered through said facilities attributed to the account of Mich Wis plus the average cost of service per Mcf of that portion of Applicant's gathering system which is used to deliver Mich Wis's gas to Applicant's transmission systems multiplied by the volume of gas (before adjustment for Btu) attributable to the account of Mich Wis.

Additionally, Applicant requests that such authorization specifically provide for the exchange of gas from additional wells pursuant to the agreement as each such producing well becomes available.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3771 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. ER78-196]

KANSAS POWER & LIGHT CO.

Notice of Filing of Addendum

FEBRUARY 3, 1978.

Take notice that Kansas Power & Light Co. on January 30, 1978, tendered for filing Addendum No. 1, dated December 27, 1977, to the Electric Interconnection Agreement dated January 18, 1972, between Kansas Power & Light Co. and the city of McPherson, Kansas, Board of Public Utilities, and designated KPL Rate Schedule FPC No. 127. Kansas Power & Light Co. indicates that Addendum No. 1 is an extension of the term of agreement to 25 years from October 27, 1977, from the original term of 25 years from January 18, 1972.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 21, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3772 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. E-9104]

NEVADA POWER CO.

Notice of supplemental Filing

FEBRUARY 3, 1978.

Take notice that Nevada Power Co. (Nevada) on December 23, 1977, tendered for filing a supplement to Nevada's filing of September 22, 1977. Said supplemental filing makes an addition to the fuel adjustment clause language of Nevada's FPC Rate Schedule No. 2, as filed on September 22, 1977.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before February 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but

will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3773 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. EL78-7]

POTOMAC ELECTRIC POWER CO.

Notice of Application

FEBRUARY 3, 1978.

Take notice that Potomac Electric Power Co. (Pepco) on January 24, 1978, tendered for filing, pursuant to section 203(a) of the Federal Power Act, an application for authorization of the sale by Pepco, and the purchase by Southern Maryland Electric Cooperative, of certain real estate and a transmission line located thereon.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 28, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3774 Filed 2-9-78; 8:45 am]

[6740-02]

[Docket No. ER78-67]

PUBLIC SERVICE CO. OF OKLAHOMA

Informal Conference and Extension of Time

FEBRUARY 3, 1978.

On January 9, 1978, Public Service Co. of Oklahoma (PSCO) filed a motion requesting an informal conference with the Commission Staff to determine the appropriate cost support which should be filed in the above-captioned docket pursuant to the Commission's order of November 30, 1977, in Docket Nos. ER77-422, ER78-20 and ER 78-49. The Motion states that the Intervenor Municipalities join in the request for a conference.

Upon consideration, notice is hereby given that an informal conference will be held at the Federal Energy Regula-

tory Commission, 825 North Capitol Street, Washington, D.C. at 10 a.m. on February 15, 1978. In consideration of the motion and conference, the date for the required filing is hereby extended to and including March 1, 1978, on or before which date PSCO shall file the rates and cost support required by the November 30, 1977, order.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-3775 Filed 2-9-78; 8:45 am]

[3128-01]

International Affairs

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of the following meeting:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on February 16 and 17, 1978, at the headquarters of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 10:45 a.m. on February 16. The purpose of this meeting of the IAB is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held on February 16 and to permit representatives of the IAB to meet on February 17 with representatives of the IEA Secretariat and representatives of the Directorate-General for Energy of the Commission of the European Communities to discuss the development of EEC emergency measures and the relationship between such measures and the IEA emergency sharing system.

The agenda for the meeting of the SEQ on February 16, and participation of the representatives of the IAB at that meeting, is under the control of the SEQ. It is expected that the following draft agenda will be followed at the meeting of the SEQ on February 16 and that representatives of the IAB will be invited to join that meeting during discussion of items 4 through 10 of the agenda, or such other items as may be determined by the SEQ.

1. Approval of draft agenda.
2. Summary Record of the Nineteenth Meeting.
3. Quarterly Oil Forecast 4Q77-3Q78.
4. Special Section of the Information System:

(a) Current Issues of Quarterly Oil Statistics (up to 3Q77) and Base Period Final Consumption (BPFC) (4Q76-3Q77);

(b) Meeting of N.W. European data experts on intra-IEA import/export imbalances (oral statement by the Secretariat);

(c) Procedure to adjust Base Period Final Consumption during an emergency;

(d) Base Period Final Consumption (BPFC) (3Q76-2Q77) for the second Allocation Systems Test (AST-2).

5. Spring 1978 Allocation Systems Test:

(a) National Emergency Sharing Organization (NESO) contacts;

(b) NESO briefing meetings—agenda;

(c) Final Systems Test Guide;

(d) Sequence of events and timetables/deadlines;

(e) NESO activities vis-a-vis nonreporting companies;

(f) Demand restraint, stock draw-down and product balancing;

(g) Standing Group on Emergency Questions (SEQ) Emergency Group;

(h) AST-2 Press Release.

6. EEC matters:

(a) EEC clearance for industry participation in NESOs in AST-2;

(b) Presentation of development of EEC emergency measures to date.

7. National Emergency Sharing Organizations:

(a) Presentation by the U.S. delegation;

(b) Presentation by the German delegation.

8. Emergency Management Manual:

(a) Report by the Chairman on January 19th Governing Board meeting;

(b) Issue of new Manuals (oral statement by the Secretariat).

9. Future meeting dates

10. Any other business.

The agenda for the portion of the meeting of the IAB on February 17th is set out below.

Discussion of the development of EEC emergency measures and the relationship between such measures and the IEA emergency sharing system.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public. As provided by section 209.32 of DOE regulations, IEP requirements and unanticipated procedural delays in processing this notice require the usual 7 day notice period to be shortened.

Issued in Washington, D.C., February 6, 1978.

WILLIAM P. DAVIS,

Deputy Director of Administration,
Department of Energy.

[FR Doc. 78-3794 Filed 2-9-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION
AGENCY

[FRL 853-31]

COMMENTS ON ENVIRONMENTAL IMPACT
STATEMENTS AND OTHER ACTIONS IM-
PACTING THE ENVIRONMENT

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of September 1, 1977, and September 30, 1977.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in appendix II, and the EPA source for copies of the comments as set forth in appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listed in appendices I, III, IV, and V.

Copies of the EPA manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW., Washington, D.C. 20460, telephone 202-755-2808. Copies of the draft and final environmental

impact statements referenced herein are available from the originating Federal department or agency.

Dated: January 30, 1978.

PETER L. COOK,
Acting Director,
Federal Activities.

APPENDIX I.—Draft environmental impact statements for which comments were issued
between Sept. 1, 1977 and Sept. 30, 1977

Identifying No.	Title	General nature of comments	Source for copies of comments
Cops of Engineers			
DS-COE-A32498-MS.....	Gulfport Harbor, Channel Deepening and Navigation, Harrison County, Miss.	ER2	E
DS-COE-D36025-PA.....	Flood Control Improvements, South Harrisburg, Pa.	LO1	D
D-COE-F39004-MN.....	Lake Rebecca Recreational Development, Fish and Wildlife Enhancement, Minn.	LO2	F
D-COE-G32025-TX.....	Channel Improvements for Navigation, Brazos Island Harbor, Tex.	ER2	G
D-COE-K36021-CA.....	Marysville Lake, Yuba River, Sutter and Nevada Counties, Calif.	3	J
Department of Agriculture			
D-AFS-B61008-NH.....	Waterville Planning Unit, White Mountain National Forest, N. H.	LO2	B
D-AFS-G65026-00.....	Timber Management Plan, Quachita National Forest, Arkansas and Oklahoma.	LO1	G*
D-AFS-J61017-MT.....	Great Bear Wilderness Proposal, Flathead and Lewis and Clark National Forests, Mont.	LO1	I
D-AFS-L61093-WA.....	Bear Planning Unit, Land Management Plan, Gifford Pinchot National Forest, Skamania County, Wash. (USDA-FS-R6-DES (ADM) 77-1).	LO1	K
D-REA-L07001-OR.....	Boardman Coal Plant, 550 MW Coal-fired, Steam Electric Generating Station Pacific Northwest Generating Co. Morrow County, Oreg. (USDA-REA-EIS (ADM) 77-4D).	ER2	K
D-SCS-E36045-TN.....	Pine Creek Watershed project, Scott County, Tenn. (USDA-SCS-EIS-WS (ADM)-1-D-TN).	LO2	E
D-SCS-F36051-WI.....	Tri-Creek Watershed, Monroe County, Wis ...	LO2	F
Department of Defense			
D-USN-E11006-GA.....	Preferred Alternative Location for a Fleet Ballistic Missile (FBM) Submarine Support Base, Kings Bay, Ga.	ER2	E
Department of Interior			
D-BLM-J35003-CO.....	Proposed Foothills Project, Colo.....	ER2	I
D-IBR-G39003-00.....	Pecos River Basin Water Salvage Project, New Mexico and Texas.	LO1	G
Department of Transportation			
D-CGD-E50003-KY.....	Johns Creek Railway Line Bridge, Levisa Fork of the Big Sandy River, Pike County, Ky.	LO1	E
D-FHW-B40027-NH.....	NH-101 Relocation, Candia to Raymond, Rockingham County, N. H.	LO2	B
D-FHW-E40115-AL.....	AL-35, Rainsville to Fort Payne, Dekalb County, Ala. (FHWA-ALA-EIS-77-01D).	LO1	E
D-FHW-E40116-AL.....	University Blvd., Mobile County, Ala. (FHWA-ALA-EIS-77-02D).	LO1	E
D-FHW-E40117-TN.....	TN-153, Hixson Pike to Hamill Rd., Hamilton County, Tenn. (FHWA-TN-EIS-77-01).	LO1	E
D-FHW-E40118-KY.....	Louisa and Catlettsburg Rd., Appalachian Development Corridor B, U.S. 23, Boyd County, Ky. (FHWA-KY-EIS-77-01-DS).	LO2	E
D-FHW-F40098-MN.....	24th Ave. to Mississippi River Bridge, I-494, Hennepin and Dakota Counties, Minn.	ER2	F
D-FHW-L40054-WA.....	WA-509, Pacific Ave. Interchange to port of Tacoma Rd., Tacoma, Kitsap County, Wash. (FHWA-WA-EIS-77-03-D).	ER2	K

APPENDIX I.—Draft environmental impact statements for which comments were issued between Sept. 1, 1977 and Sept. 30, 1977—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
Federal Energy Administration			
DS-FEA-F09001-IN.....	Naptha Allocation and Synthetic Natural Gas Production, Marion County, Ind.	ER2	F
DS-FEA-G03006-TX.....	Strategic Petroleum Reserve, Bryan Mound Salt Dome, Brazoria County, Tex.	LO2	G
Energy Research and Development Administration			
D-ERD-A00132-WA.....	High Flux Neutron Source Facility (HFNS) Hanford Reservation, Richland, Wash.	LO2	K
Federal Power Commission			
D-FPC-L08028-AK.....	Soloman Gulch Project No. 2742, Alaska.....	LO2	K
Department of Housing and Urban Development			
D-HUD-D40053-VA.....	Graham Rd. Extension and Widening, Petersburg, Va.	LO2	D
D-HUD-E28022-AL.....	Rural Water System Improvements, Bullock County, Ala.	ER2	E
D-HUD-E39001-NC.....	Big Ditch, Southern Side, (CDBG) High Point, N. C.	LO1	E
D-HUD-G85056-TX.....	Country Colony Subdivision, Montgomery County, Tex.	LO2	G
D-HUD-G85057-TX.....	Camden Park Subdivision, Harris County, Tex.	LO2	G
D-HUD-G85058-TX.....	North Spring Subdivision, Harris County, Tex.	LO2	G
D-HUD-G85059-TX.....	Greensbrook and Kings Lake Forest Subdivision, Harris County, Tex.	LO2	G
D-HUD-G85060-NM.....	Heritage Hills Subdivision, Albuquerque, Bernalillo County, N. Mex.	LO2	G
D-HUD-G85061-NM.....	Taylor Ranch Planned Community, Bernalillo County, N. Mex.	LO2	G
D-HUD-H85000-NB.....	The Highlands North Subdivision, Lincoln, Lancaster County, Nebr.	ER2	H
D-HUD-J24001-CO.....	Sloan Lake Sanitary Sewer Improvements, Denver, Colo.	LO1	I
National Capital Planning Commission			
D-NCP-D61005-DC.....	Location and Program, Washington D.C. Civic Center and Related Modifications to the Urban Renewal and Comprehensive Plans, Washington D.C.	ER1	D
Department of Commerce			
D-NOA-C90001-VI.....	Virgin Islands Coastal Zone Management Program.	LO2	C

APPENDIX II.—DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—Final environmental impact statements for which comments were issued between Sept. 1 and Sept. 30, 1977

Identifying No.	Title	General nature of comments	Source for copies of comments
CORPS OF ENGINEERS			
FS-COE-A35118-MN.....	Duluth-Superior Harbor, Operation and Maintenance Diked Disposal Facility, Minnesota.	EPA's concerns were adequately addressed in the final EIS.....	F
F-COE-F36023-MN.....	Winoma, Flood Control Project and Waterfront Development, Minnesota.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA continues to be concerned with the impact of truck noise along Pelzer St.	F
F-COE-F36041-OH.....	Muskingum River, Basin Flood Control System, Holmes and Richland Counties, Ohio.	EPA's comments were adequately addressed in the final EIS.....	F
F-COE-F36045-WI.....	Flood Control, Mississippi River at Prairie Du Chien, Crawford County, Wis.	do.....	F
FS-COE-J36007-CO.....	South Platte River Flood Control, Chatfield Dam to Denver, Arapahoe County, Colo.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA made several comments regarding the responses the Corps made to EPA's draft comments.	I
DEPARTMENT OF AGRICULTURE			
F-AFS-K65017-00.....	Alpine Planning Unit, Toiyabe National Forest, Nev. and Calif.	EPA's concerns were adequately addressed in the final EIS.....	J
F-AFS-L67003-AK.....	U.S. Borax Mining Access Road, Quartz Hill Prospect, Tongass National Forest, Alaska. (USDA-FS-R10-FES (ADM) 77-04).	do.....	K
F-SCS-C36023-NJ.....	Furnace Brook Watershed, Warren County, N.J.	do.....	C
DEPARTMENT OF COMMERCE			
F-NOA-K86001-CA.....	State of California Coastal Management Program, Calif.	do.....	J
DEPARTMENT OF TRANSPORTATION			
F-CGD-F50001-WI.....	Highway Bridge, Wolf River, Fremont, Waupaca County, Wis.	do.....	F
F-FHW-B40018-NH.....	NH-9, Sullivan, Nelson and Stoddard, Cheshire County, N.H.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA made several comments to assist FHWA's preparation of future EIS's.	B
F-FHW-C40026-NY.....	Sprain Brook Parkway, Westchester County, N.Y.	Generally, EPA's concerns were adequately addressed in the final EIS. However, supplementary data was provided on the analysis for hydrocarbon emissions.	C
F-FHW-C40029-NJ.....	Ocean Blvd., Morris to Ocean Ave., Long Branch, Monmouth County, N.J.	EPA's concerns were adequately addressed in the final EIS.....	C
F-FHW-D40018-PA.....	LR 1036 and LR 1013, Tioga County, Pa.	EPA's concerns were adequately addressed in the final EIS. EPA did request that data supporting water quality statements made in the final EIS be supplied at the sec. 404 permit application review stage.	D
F-FHW-E40119-TN.....	South Knoxville Blvd., U.S. 441, Chapman Highway, Knoxville to TN-158, Knox County, Tenn (FHWA TN-EIS-75-2-F).	EPA's concerns were adequately addressed in the final EIS.....	E

APPENDIX III.—Final environmental impact statements for which comments were issued between Sept. 1 and Sept. 30, 1977—Cont'd

Identifying No.	Title	General nature of comments	Source for copies of comments
DEPARTMENT OF TRANSPORTATION			
F-FHW-F40063-MN.....	MN-43, Winoma County, Minn.....	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA expressed its concerns for the potential impacts upon water quality due to stream modification. Furthermore, EPA requested that the necessity for stream modification be looked into prior to construction.	F
F-FHW-F40065-MN.....	I-35E, MN-35 to MN-110, Dakota County, Minn.	EPA's concerns were adequately addressed in the final EIS. However, EPA has recommended the A2 alternative be selected through Blackhawk Lake. This route would minimize the impact upon the lake and associated wetlands.	F
F-FHW-H40046-KS.....	U.S. 36 Location Study, Brown and Doniphan Counties, Kans.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA requested a chemical analysis of the Missouri River bottom sediments prior to a decision to dredge the waterway to obtain roadway fill. The analysis is needed to determine the effects of dredging on the Missouri River ecosystem and whether the water quality of the return flows should be monitored. EPA also requested more consideration be given to obtaining borrow material from inland sites.	H
F-FHW-K40042-NV.....	East Leg, U.S. 95 Expressway and I-515 Spur, Clark County, Nev.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA reiterated comments previously made on the draft EIS regarding increased emissions and secondary impacts.	J
FEDERAL POWER COMMISSION			
F-FPC-G03009-TX.....	Matagorda Bay Project, Tex.....	EPA's review of the final EIS indicated the FPC was unresponsive to comments made on the draft EIS. EPA recommended the FPC prepare a supplemental statement fulfilling the requirements to adequately respond to draft comments.	G
GENERAL SERVICES ADMINISTRATION			
F-GSA-J81003-UT.....	Bureau of Mines Metallurgy Research Center, Salt Lake City, Utah.	EPA's concerns were adequately addressed in the final EIS. However, EPA encouraged GSA to take advantage of Utah's climate and design the building to utilize solar energy.	I
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
F-HUD-D85010-VA.....	Downtown West Conservation Project, Norfolk, Va.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA did recommend that further study of potential air quality impacts be undertaken prior to the closing of Duke St. to through traffic.	D
F-HUD-E85023-SC.....	Sangaree, a Planned Community, Berkeley County, S.C.	EPA's concerns were adequately addressed in the final EIS.....	E
F-HUD-F85014-IL.....	Oak Park Towers, Oak Park, Cook County, Ill.	EPA's concerns were adequately addressed in the final EIS.....	F
F-HUD-K89020-CA.....	South Park Neighborhood Program, Santa Rosa, Calif.	do.....	J
INTERSTATE COMMERCE COMMISSION			
F-ICC-F53003-WI.....	Chicago and Northwestern Transportation Cos., Ashland County, Wis., Docket No. AB-18, Sub-No. 21, AB-31, Sub No. 5.	do.....	F

APPENDIX IV.—Final environmental impact statements which were reviewed and not commented on between Sept. 1 and Sept. 30, 1977

Identifying No.	Title	Source of review
CORPS OF ENGINEERS		
F-COE-G34022-TX.....	Operation and Maintenance, Town Bluff Dam, B.A. Steinhagen Lake and Sam Rayburn Dam and Reservoir, Neches and Angelina Rivers Basin.	G
DEPARTMENT OF AGRICULTURE		
F-AFS-E65017-SC.....	10-yr Management Plan, Francis Marion National Forest, Berkeley and Charleston Counties, S.C.....	E
F-AFS-G65021-NM.....	Algecide Treatment, Snow and Quemado Lakes, Gila National Forest, Catron County, N. Mex.....	G

APPENDIX III.—Final environmental impact statements for which comments were issued between Sept. 1 and Sept. 30, 1977 cont'd

Identifying No.	Title	General nature of comments	Source for copies of comments
DEPARTMENT OF AGRICULTURE—continued			
F-AFS-J40027-MT.....	Buck Creek and Yellow Mules Special Use Road Permit to Burlington Northern, Inc., Gallatin National Forest, Mont		I
F-AFS-L61043-ID.....	Land Management Plan, Smith Creek Planning Unit, Kaniksu National Forest, Boundary County, Idaho (USDA-FS-R1-(04)-FES(ADM)76-2).		K
F-AFS-L61084-ID.....	Land Management Plan, Lowell Planning Unit, Clearwater National Forest, Idaho County, Idaho (USDA-FS-R1-FES-ADM).		K
F-SCS-D36024-DE.....	Marshhope Creek Drainage and Flood Control Project, Delaware and Maryland		D
F-SCS-E36043-AL.....	Dynne Creek Watershed, Cleburne County, Ala		E
DEPARTMENT OF DEFENSE			
F-UAF-E10001-FL.....	Joint Readiness Exercise "Bold Eagle 78" Eglin AFB Test Range Complex, Santa Rosa, Okaloosa and Walton Counties, Fla.		E
F-USN-E60003-FL.....	Air Installation Compatible Use Zone (AICUZ) Restrictive Easement Fee Title Acquisition, Naval Air Station, Cecil Field/OLF Whitehouse, Fla.		E
DEPARTMENT OF INTERIOR			
F-BIM-A08032-00.....	500 kV Transmission Line, Midpoint, Idaho to Meford, Oreg., Pacific Power and Light Co. (FES 77-30).....		K
F-BPA-L08024-WA.....	Electrical Service to the Northwest Alloys Magnesium Plant, Stevens County, Wash. (DES 77-7).....		K
F-IBR-G07010-NM.....	San Juan Powerplant, Expansion, San Juan County, N. Mex		G
F-IBR-L36052-WA.....	Esquatzel Coulee Wasteway, Columbia Basin Project, Franklin County, Wash. (FES-30).....		K
DEPARTMENT OF TRANSPORTATION			
F-FHW-E40085-NC.....	Freman Mill Rd., Meadowview Randleman Rd., Greensboro, Guilford County, N.C. (FHWA-NC-EIS-76-06-F)		E
F-FHW-E40090-KY.....	U.S. 127 and KY-151, Alton Bypass, Anderson and Franklin Counties, Ky. (FHWA-KY-EIS-75-09-F).....		E
F-FHW-E40094-AL.....	U.S. 280, Business 280 and U.S. 431, Phenix City, Russell County, Ala. (FHWA-AL-EIS-71-21-FS-1).....		E
F-FHW-E40101-MS.....	Bailey Ave. to Illinois Central Gulf R.R. Overpass, Jackson, Hines County, Miss. (FHWA-MS-EIS-77-01-D).....		E
F-UMT-B54001-MA.....	Red Line Extension, Harvard Sq. to Arlington Heights, Boston, Suffolk County, Mass		B
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
F-HUD-G24006-AR.....	Water Construction Program, City of Mena, Polk County, Ark.....		G
F-HUD-G85032-TX.....	Pebble Hills Addition, Leavell Development, El Paso County, Tex		G
F-HUD-G85033-TX.....	Golf Resort Joint Venture, El Paso County, Tex		G
F-HUD-G85038-TX.....	Candleridge/Southridge Community, Tarrant County, Tex.....		G
F-HUD-G85039-TX.....	Parkway Forest Subdivision, Harris County, Tex		G
F-HUD-G85043-TX.....	Summerfields Community, Tarrant County, Tex		G

APPENDIX V.—Regulations, legislation and other Federal agency actions for which comments were issued between Sept. 1 and Sept. 30, 1977

Identifying No.	Title	General nature of comments	Source for copies of comments
DEPARTMENT OF AGRICULTURE			
A-SCS-A39124-00.....	Channel Modifications Guidelines.....	EPA offered several comments on the proposed guidelines in order to strengthen the environmental aspects.	A
DEPARTMENT OF INTERIOR			
A-BIM-A02093-AK.....	Beaufort Sea Outer Continental Shelf (OCS) (Sale No. 50), Off the Northern Coast of Alaska, Call for Nominations.	EPA recommended that BLM conduct a full environmental analysis of the potential impacts of causeway construction and the alternatives there to prior to any decision on whether to proceed with the proposed lease sale.	A
DEPARTMENT OF TRANSPORTATION			
R-CGD-A52120-00.....	33 CFR Pt. 157, Tank Vessels Carrying Oil in Trade, Protection of Marine Environment, 33 CFR Pt. 157, Improved Emergency Steering Standards.	EPA believes the potential impact of the proposed regulations on air quality should be analyzed and suggested preparing an environmental impact statement as a tool for this analysis.	A

APPENDIX VI

SOURCES FOR COPIES OF EPA COMMENTS

- A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 922, Waterside Mall SW., Washington, D.C. 20460.
- B. Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Mass. 02203.
- C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.
- D. Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106.
- E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Ga. 30308.
- F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604.
- G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Tex. 75270.
- H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Mo. 64108.
- I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colo. 80203.
- J. Director of Public Affairs, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94108.
- K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Wash. 98101.

[FR Doc. 78-3481 filed 2-9-78; 8:45 am]

[6560-01]

PHOTOCHEMICAL OXIDANTS AND RELATED ORGANICS

Availability of Second Draft of External Review Draft of Air Quality Criteria

On February 10, 1978, the second draft of the external review draft of "Air Quality Criteria for Photochemical Oxidants and Related Organics" will be available from the Criteria and Special Studies Office, Health Effects Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone No. 919-549-8411, ext. 2266 or 2267.

Dated: February 6, 1978.

D. S. BARTH,
Acting Assistant Administrator
for Research and Development.

[FR Doc. 78-3840 Filed 2-9-78; 8:45 am]

[6560-01]

[FRL 853-8; OPP-180171]

STATES OF CALIFORNIA AND UTAH

Issuance of Specific Exemptions To Use BAAM (Amitraz) To Control Pear Psylla

The Environmental Protection Agency (EPA) has granted specific exemptions to the California Department of Food and Agriculture and the Utah Department of Agriculture (hereafter referred to as "California" and "Utah" respectively) to use BAAM¹ for the control of Pear Psylla on pears grown commercially in those two States. There were two separate specific exemptions issued; this notice will discuss both, pointing out similarities and differences. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the applications on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

Earlier in 1977, EPA approved issuance of specific exemptions to Washington State and Oregon to use BAAM to control pear psylla on commercial pears; notice of this action was published in the FEDERAL REGISTER on July 21, 1977 (42 FR 37437). Subsequently, two additional States, California and Utah, requested approval to use, under the provisions of specific exemptions, a portion of this insecticide previously authorized in order to control populations of the pear psylla in their pear-growing areas. Pear psylla (*Psylla pyricola*) appears to be one of the most serious and difficult to control pests on pears in the Northwest. A description of the pest was published as part of the July 21, 1977, notice; California and Utah apparently faced the same potential problems as did Washington State and Oregon.

At the present time, there are ten (10) available insecticides registered for use in the Northwest for the control of pear psylla. Four of these are organophosphates and when used by themselves or in combination with other insecticides are providing little economic control of this pest. There

¹contains 19.8 percent N'-(2,4-dimethylphenyl)-N-[(2,4-dimethylphenyl) imino] methyl-N-methylmethanimidamide, which has the common name Amitraz.

appear to be only three pesticides which provide some control during the growing season in California and Utah—Endosulfan, and Dithane M-45 and volck oil. Endosulfan is effective against the early nymphal stages; however, due to the overlays of generations of this pest, economic control of the pest is not achieved by this insecticide during the summer. Dithane M-45, an ethylene bisdithiocarbamate, is also only effective against early nymphs. Therefore, the main problem is the present unavailability of an effective insecticide that would control the pear psylla during the summer growing season. Chlordimeform, recently withdrawn from the market by its producers, has been effective for control of this pest during the summer season; however, while Chlordimeform is still registered for this use, it is not expected to be available to pear growers this year.

In California, the counties of Mendocino and Lake were at first the only counties in serious need of BAAM (representing a total of 14,000 acres), although specific orchards in other counties were potential problem areas as well; permission was requested to treat these areas where an emergency condition was found to exist based on the written recommendation of authorized county personnel. In Utah, the total acreage designated for treatment was 704, with a similar request that additional acreage should be treated upon establishment of an emergency condition.

In terms of possible adverse effects on man and the environment, issuance of exemptions to use BAAM in California and Utah does not appear to constitute an additional risk to the public. As also stated in the notice published on July 21, 1977, the EPA is currently investigating BAAM as a potential oncogen (see FEDERAL REGISTER of April 6, 1977 (42 FR 18299)). The original risk assessment by the Carcinogenic Assessment Group (CAG) relating to the problems in Washington State and Oregon (42 FR 37438) was based on 200,000 pounds active ingredient Amitraz; to date, the total quantity of BAAM (Amitraz) available in the United States is 82,500 pounds active ingredient. Thus, the overall risk should be less.

After reviewing the applications and other available information, EPA determined that: (a) Pest outbreaks of pear psylla have occurred or are likely to occur; (b) there is no pesticide presently registered and available for use to effectively control the pear psylla in California and Utah; (c) significant economic problems may result if the

pest is not controlled; and (d) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. The Administrator has weighed the risks and benefits of this use of BAAM on pears in relation to both economics and the hazard to man. Accordingly, California and Utah have been granted specific exemptions to use the pesticide noted above. The Utah specific exemption terminated on August 30, 1977; however, the California specific exemption was amended twice and will terminate on January 31, 1978.

The amendments to the California exemption and the additional conditions pertaining to both exemptions are discussed below.

UTAH

The Utah specific exemption to use BAAM to control pear psylla was subject to the following conditions:

1. The Upjohn product BAAM, which contains 1.5 pounds Amitraz per gallon, was used;
2. The dosage rate was 3 to 4 quarts of product (1 to 1.5 pounds active ingredient) per acre;
3. Applications were to be made by ground application only (airblast sprayers or handgun);
4. Only State-certified commercial or private applicators were to apply this pesticide. Special emphasis was to be placed on the potential hazard of this pesticide to humans;
5. The use of BAAM was authorized only when an emergency condition was found to exist. The criteria to be used in making this determination were as follows: (1) The judicious use of currently registered pesticides for pear psylla are not providing adequate control of this pest and (2) in a particular orchard, a majority of the trees sampled have 10 percent or more of the shoots in the scaffolding infested with nymphs of the pear psylla. For each orchard, a minimum of 10 trees were to be sampled;
6. Only State-licensed pest control consultants were authorized to determine when an emergency condition exists (using the criteria above). Determinations were to be made on an orchard-by-orchard basis. Upon a determination that an emergency condition was present, as defined by fulfilling the criteria above, the consultant was to sign a State-approved form which authorized the grower to purchase BAAM. This form was to include the name of the grower, number of acres to be treated, amount of BAAM authorized to be purchased, and the dosage

rate to be applied (1 to 1.5 pounds A.I. per acre);

7. Up to 704 acres of pears could be treated. Two applications were authorized. If a third treatment was necessary, the EPA Regional office was to approve it before application was made;

8. Pesticide dealers were not to be allowed to sell BAAM to any grower or applicator unless the signed authorization was presented;

9. Pesticide distributors were responsible for keeping accurate records of the amount of BAAM received from Upjohn and the amounts which were sold to dealers. Dealers were also to maintain accurate records of the amounts of BAAM received and sold;

10. Agricultural workers were not to reenter any orchard sprayed with BAAM until the foliage was completely dry;

11. Applicators were required to wear protective clothing and masks;

12. There was to be a preharvest interval of not less than seven (7) days;

13. Pears with a residue level of Amitraz not exceeding 3 ppm could enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, was advised of this action;

14. The Utah Department of Agriculture was to participate in residue studies to determine the residue level of BAAM in pears at harvest and during storage;

15. A final report was to be submitted to EPA by the end of 1977; this report will outline the acreage that was treated, the total amounts of BAAM applied, the results of the program, and any adverse effects (such as phytotoxicity);

16. All label precautions were to be followed;

17. All unused, unopened containers of BAAM were to be returned to the manufacturer at the end of the growing season;

18. This exemption applied only to the preharvest application of BAAM; and

19. The EPA shall be immediately informed of any adverse effects resulting from the use of this pesticide in connection with this exemption.

A final report submitted by Utah indicated that 16 pear growers applied BAAM this year; with the exception of one grower, only one application of BAAM was made. Approximately 200 acres were treated. Fruit samples were taken in the field and in storage facilities and analyzed by the State Chemist for residues of BAAM. According to Utah, no detectable residues of BAAM were found when the samples were

analyzed by a high pressure liquid chromatography method.

CALIFORNIA

The California exemption to use BAAM to control pear psylla has been amended twice since it was originally issued. The original exemption was for preharvest application of BAAM; however, BAAM was not used during the growing season. Subsequently the first amendment was submitted, which requested that the use of BAAM be allowed for postharvest treatment in three counties of California (Lake, Mendocino, and Sonoma) due to a unique situation with mite control which complicated the pear psylla control program. Modifications of some of the restrictions earlier imposed were also requested, the most notable of which was to extend the time limit of the exemption. Inclusion of Sonoma County also increased the acreage to be treated to 15,000. The second amendment requested permission to apply BAAM in the county of Santa Clara, which involved a total of 1,537 acres. After consideration of all factors, the amendments were approved; the time limit of the specific exemption was extended to January 31, 1978. This specific exemption is also subject to the following conditions:

1. The first three conditions of the California exemption are identical to those of the Utah exemption;

2. Due to the limited supply of BAAM, only the orchards in need of treatment and which are identified as such in writing by the Agricultural Commissions in Lake, Mendocino, Sonoma, and Santa Clara Counties are authorized for treatment. Only after all methods of pear psylla control have failed are such orchards designated for treatment;

3. Where pear psylla is deemed a serious problem in counties other than those listed above, the respective Agricultural Commissioners must notify the EPA Regional office of the seriousness of the problem. No other counties are authorized for treatment unless the Regional Office is notified and approves such treatment. This approval must be transmitted in writing both to EPA Headquarters and the county involved within 1 week;

4. Only State-certified commercial or private applicators may apply this pesticide. Special emphasis must be placed on the potential hazard of this pesticide to humans;

5. The use of BAAM is authorized only when an emergency condition is found to exist. The criteria to be used in making this determination are the same as those mentioned in condition No. 5 of the Utah specific exemption;

6. Only State-licensed pest control consultants are authorized to determine when an emergency condition exists, using the criteria just mentioned. Determinations will be made on an orchard-by-orchard basis. Upon a determination that an emergency condition is present, as defined by fulfilling the criteria, the consultant will sign a State-approved form which authorizes the grower to purchase BAAM. This form will include the same information as specified in condition No. 6 of the Utah exemption;

7. Up to two applications are authorized. If additional treatments are determined to be necessary, approval must be obtained by the State from the Regional Office, which will in turn, transmit this approval to EPA Headquarters;

8. Pesticide dealers will not be allowed to sell BAAM to any grower or applicator unless the signed authorization form is presented;

9. Pesticide distributors will be responsible for keeping accurate records of the amount of BAAM received from Upjohn and the amounts which are sold to dealers. Dealers will also maintain accurate records of the amounts of BAAM received and sold;

10. Agricultural workers will not reenter any orchard sprayed with BAAM until the foliage is completely dry;

11. Applicators must wear protective clothing, face shields and cartridge-type respirators. Applications are now authorized postharvest, but in no case later than January 31, 1978. If additional time is needed, an amendment may be considered;

12. Pears with a residue level of Amtraz not exceeding 3 ppm may enter interstate commerce. Pear fruit with residue levels of BAAM exceeding 3 ppm must be destroyed. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

13. The California Department of Food and Agriculture should participate in residue studies to determine the residue level of BAAM in pears at harvest and during storage;

14. A final report will be submitted to EPA by June 10, 1978; this report will provide the same information as required under condition 15 of the Utah exemption;

15. All label precautions will be followed;

16. All unused, unopened containers of BAAM will be returned to the manufacturer at the end of the growing season;

17. This exemption applies only to the postharvest application of BAAM and expires on January 31, 1978; and

18. The EPA shall be immediately informed of any adverse effects resulting from the use of this pesticide in connection with this exemption.

(Sec. 18, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751 (7 U.S.C. 136(a) et seq.))

Dated: February 3, 1978.

EDWIN L. JOHNSON,
Deputy Assistant
Administrator
for Pesticide Programs.

[FR Doc. 78-3839 Filed 2-9-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY COMMITTEES CHARTERED UNDER PROVISIONS OF THE FEDERAL ADVISORY COMMITTEE ACT, PUB. L. 92-463

Annual Comprehensive Review

The Federal Communications Commission has eighteen advisory committees which are currently chartered under the Federal Advisory Committee Act, Pub. L. 92-463. As required by section 7(b) of the Public Law, this agency is undertaking its annual review of the activities and responsibilities of each committee to determine whether, in each case, (1) a committee is indispensable to Commission proceedings and should therefore be continued, (2) there are more effective ways of performing the tasks or studies for which a committee is responsible, or (3) the tasks or studies assigned to a committee, as expressed in the committee charter, have been completed, thereby permitting termination of the committee.

Transmittal Memorandum No. 5 to the Office of Management and Budget Circular No. A-63 requires that Federal agencies provide a means by which members of the public may participate in the review process. Accordingly, we invite comments from interested members of the public on the need for and performance of FCC advisory committees.

Fourteen of the eighteen current FCC advisory committees were established to assist the Commission in its preparations for the 1979 General World Administrative Radio Conference (WARC) of the International Telecommunication Union. The WARC committees advise the Commission on anticipated future (1980 to the year 2000) frequency requirements in the specific radio service with which they are concerned, examine pertinent provisions of the international radio regulations, and recommend changes to the regulations. The fourteen WARC preparatory committees are as follows:

WARC Advisory Committee for Amateur Radio.
WARC Advisory Committee for Aural-AM.
WARC Advisory Committee for Aural-FM.
WARC Advisory Committee for Auxiliary Broadcast Services.

WARC Advisory Committee for Domestic Land Mobile Radio.
WARC Advisory Committee for Fixed Satellite.
WARC Advisory Committee for International Broadcast.
WARC Advisory Committee for Land Mobile Radio.
WARC Advisory Committee for Private Microwave.
WARC Advisory Committee for Radio Astronomy.
WARC Advisory Committee for Radio Relay (Common Carrier).
WARC Advisory Committee for Broadcasting Satellite Service (11.7-12.2 GHz Frequency Band).
WARC Advisory Committee for Television.
WARC Industry Advisory Committee (this committee will be terminated on March 31, 1978).

There are four additional FCC advisory committees:

Radio Technical Commission for Marine Services, chartered to advise the FCC and Executive Departments and Agencies on matters related to maritime communications, practices and needs in marine communications, and present and projected systems for improving telecommunication facilities;

National Industry Advisory Committee, chartered to advise the Commission on emergency communication policies, plans, systems, and procedures for all FCC licensed and regulated communications in order to provide emergency communication services under conditions of crisis or war;

Personal Use Radio Advisory Committee, chartered to advise the Commission on potential solutions to the interference and enforcement problems currently being experienced in the Citizens Band Radio Service. This committee will be terminated on May 1, 1978;

Advisory Committee on Cable Signal Leakage, chartered to advise the Commission in the design and monitoring of a research program to protect against interference to aeronautical and marine navigation and communications from cable television systems.

It is requested that individuals wishing to comment on any of the above FCC advisory committees submit written statements to Bernard I. Kahn, Advisory Committee Management Officer, Federal Communications Commission, 1919 M Street NW., Room 414, Washington, D.C. 20554. Comments should be specific in nature and address particular committees. To permit thorough consideration of all public comments prior to preparation of our report to the General Services Administration (due April 1, 1978), comments should be received no later than March 16, 1978. Records maintained at the Commission pertaining to advisory committees are available for public inspection. Individuals wishing to review committee files should contact the Advisory Committee Man-

agement Officer at the address shown above or by telephone 202-632-7513.

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-3826 Filed 2-9-78; 8:45 am]

[6712-01]

BROADCAST SERVICE WORKING GROUPS, 1979 WORLD ADMINISTRATIVE RADIO CON- FERENCE

Schedule of Meeting

FEBRUARY 7, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of the following meeting.

WARC ADVISORY COMMITTEE FOR INTERNATIONAL BROADCAST

Wednesday, March 1, 1978, 10 a.m. to 12:30 p.m., Room 8210, 2025 M Street NW., Washington, D.C.

Chairman: Stanley Leinwoll.
FCC Liaison: Lloyd R. Smith.

The Agenda will be as follows:

1. Call to order by the Chairman.
2. Approval of Minutes of meeting of August 10, 1977.
3. Election of a new secretary.
4. Report of Chairman on results of meeting of international broadcasters held in Vienna, Austria, February 6 and 7, 1978.
5. Plan the work of the committee for the remainder of 1978.
6. Setting next meeting date and adjournment.

The above meeting is open to broadcast industry representatives and interested members of the general public.

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-3829 Filed 2-9-78; 8:45 am]

[6712-01]

COMMON CARRIER SERVICES INFORMATION

[Report No. 896]

Applications Accepted for Filing

FEBRUARY 6, 1978.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see

§ 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed applications; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPLICATION ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

- 20628-CD-P-78 Cannon Mobilphone, Inc. (KUD239) C.P. for additional facilities to operate on 454.05 MHz at a new site described as loc. No. 3: Rt. 97, 0.5 mile east of Pleasanton, Tex.
- 20670-CD-MP-(3)-78 Mt. Vernon Telephone Co. (KUC854) C.P. for additional facilities to operate on 72.72 MHz at loc. No. 1: 2.8 miles SE. of Verona; 75.84 MHz at loc. No. 2: Hwy. 106, 1.5 miles east of Fort Atkinson; 75.88 MHz at loc. No. 3: Sunny Hill, 5 miles ESE of Baraboo, Wisc.
- 20712-CD-P-78 Comex, Inc. (KCC797) C.P. to change antenna system, replace transmitter and change frequency from 454.275 to 72.40 MHz (repeater) at loc. No. 5: North Peak, Mt. Ascutney near Ascutney, Vt.
- 20737-CD-TC-(2)-78 Tele-Page Corp., consent to transfer of control from Robert C. Conrad and Allen Gerth, transferor to Conrad Comsystems, Inc. transferee. Stations: KSV960, KWU342, Cincinnati, Ohio.
- 20738-CD-P-(9)-78 General Communications Service, Inc. (KKG565) C.P. to change antenna system and relocate facilities operating on 152.09, 152.15, 454.125, 454.225, 454.300 MHz (Base); 72.14, 454.05,

- 454.25, 454.35, 454.15 MHz (control) at loc. No. 1: U.S. Highway 80 approx. 1.5 miles SW. of Midland, Tex.
- 20739-CD-P-78 Ohio Mobile Telephone Co., Inc. (KUC956) C.P. to relocate facilities operating on 43.58 MHz to be located 180 East Broad Street, Columbus, Ohio.
- 20740-CD-P-78 General Communications Service, Inc. (KLF801) C.P. to change antenna system and relocate facilities operating on 152.24 MHz to be located on Hwy. 80 approx. 1.5 miles SW. of Midland, Tex.
- 20745-CD-P-(2)-78 Radiocall, Inc. (KSV932) C.P. for additional facilities to operate on 72.06 MHz at loc. No. 1: 347 College Street, Macon; 152.24 MHz at a new site described as loc. No. 2: 1400 Watson Boulevard, Warner Robins, Ga.
- 20746-CD-AL-78 Hopkinton Telephone Co., consent to assignment of license from Hopkinton Telephone Co., assignor to Merrimack County Telephone Co., assignee. Station: KCI302, Contoocook, N.H.
- 20747-CD-AL-78 James H. Cerqui d.b.a. Central Answering & Paging, consent to assignment of license from James H. Cerqui d.b.a. Central Answering & Paging, assignor to Central Answering & Paging, a division of James H. Cerqui, Inc., assignee.
- 20748-CD-TC-78 Rockbridge Radio Phone, Inc., consent to transfer of control from G. Wayne Raborn, transferor, to Edgar Warren Denton, Jr., transferee. Station: KUD220, Lexington, Va.
- 20749-CD-MP-(2)-78 Adirondack Mobile Telephone Co., Inc. (KDS634) C.P. to change antenna system, replace transmitter and relocate facilities operating on 454.125, 454.350 MHz at loc. No. 1 to be located at Champlain Valley Physicians Hospital, Plattsburgh, N.Y.
- 20751-CD-P-(2)-78 Advance Radio Communications Co. (KQZ755) C.P. to change antenna system operating on 454.200, 454.350 MHz at loc. No. 4: Riggs Road and First Street NE., Washington, D.C.
- 20752-CD-P-(6)-78 Caprock Communications, Inc. d.b.a. Caprock Radio Dispatch (KKO353) C.P. to change antenna system, replace transmitter and relocate facilities operating on 152.03, 152.21 MHz at loc. No. 1 to a new site described as loc. No. 9 and 75.46, 75.88 MHz (repeater) at the same site: Loop Highway, 1 mile north of Eunice; additional control facilities 72.72, 72.80 MHz at loc. No. 7: 601 North Grimes Street, Hobbs, N.H.
- 20753-CD-AL-78 Island Telepage Systems, Inc., consent to assignment of license from Island Telepage Systems, Inc., assignor to Pacific Northwest Communications, assignee. Station: KDS787, Blyn, Wash.
- 20754-CD-P-(3)-78 Western Radio Communications (new) C.P. for a new 2-way station to operate on 454.350 MHz (base) 75.54 MHz (repeater) at loc. No. 1: 8 miles south of Jeffery City on Green Mountain in south central; 72.34 MHz (control) at loc. No. 2: 112 Big Horn Rd., Casper, Wyo.
- 20755-CD-P-(4)-78 Tele-Page Corp. (KSV960) C.P. to change antenna system operating on 454.30 MHz at loc. No. 1: 3747 Warsaw Ave., Cincinnati; relocate facilities operating on 454.30 MHz at loc. No. 2: 5956 Buckwheat Road, Mt. Repose; change antenna system operating on 459.30 MHz (control) at loc. No. 3: 917 West Galbraith Road, Cincinnati; additional facilities to operate on 454.30 MHz at a new site described as loc. No. 4 to be located 1200 Hunter Road, Fairfield, Ohio.
- 20756-CD-P-78 Nashville Mobilphone, Inc. (KIY750) C.P. for additional facilities to

operate on 152.18 MHz at loc. No. 2: 0.5 mile north of Old Hickory Blvd. and 1 mile west of Granny White Pike, Nashville, Tenn.

20757-CD-MP-78 Business Communications, Inc. (KLF617) C.P. to change antenna system operating on 35.58 MHz: 700 Poydras Street, New Orleans, La.

20758-CD-P-78 Mobile Radio System of Ventura, Inc. (KSV976) Mobile Radio System of Ventura, Inc. (KSV976) C.P. for additional facilities to operate on 152.24 MHz at a new site described as loc. No. 4 to be located at South Mountain, approx. 3 miles SE. of Santa Paula, Calif.

20759-CD-P-(4)-78 Wayne Alan Bird d.b.a. Wyoming Mobilphone (new) C.P. for a 2-way station to operate on 454.300 MHz (base) 75.90 MHz (repeater) at loc. No. 1: 10.5 miles to NNW. from Cody, on Heart Mountain; 72.10 MHz (control) at loc. No. 2: 337 North 6th, Thermopolis; 72.10 MHz (control) at loc. No. 3: 144 West North Street, Powell, Wyo.

CORRECTION

21834-CD-P-(4)-75 Michigan Bell Telephone Co. (KQA811) Lansing, Mich. Correct PN to read major amendment to application file No. 21712-CD-P-(4)-75 to change frequency 152.69 MHz for base and standby stations to 152.60 MHz. All other particulars to remain as reported on PN Nos. 761 and 764, dated July 7, and 28, 1975, respectively.

RURAL RADIO

60097-CR-P-78 RCA Alaska Communications, Inc. (new). C.P. for a new rural subscriber station to operate on 157.86 MHz to be located at village located 177 miles SW. of Barrow, Point Lay, Alaska.

1138-CF-R-78 General Telephone Co. of California: (KZI31) Renewal of developmental radio station license expiring March 1, 1978, Term March 1, 1978 to March 1, 1979.

HI-1139-CF-P-78 Hawaiian Telephone Co. (WDD39) Bishop 1177 Bishop St., Honolulu, (Honolulu) Lat. 21°18'47" N., Long. 157°51'43" W. C.P. to add transmitters and frequencies on 10955V, 11035V, 11115V MHz toward Tantalur R, Hawaii.

HI-1140-CF-P-78 Same (KUV80) Tantalur R 2.9 miles NE. of Honolulu, (Honolulu) Hawaii. Lat. 21°20'21" N., Long. 157°48'56" W. C.P. to add frequencies 11485H, 11565H, 11645H MHz toward Bishop, Hawaii, and add a new point of communication on frequencies 3730V, 3810V, 3890V MHz on azimuth 117.4° toward Ulupalakua, Hawaii.

HI-1141-CF-P-78 Same (KUP40) Ulupalakua 0.2 miles NW. of Puu Mahoe Vabm, (Maui) Hawaii. Lat. 20°38'12" N., Long. 156°23'20" W. C.P. to add frequencies on 3770V, 3850V MHz toward Wailuku, Hawaii and add a new point of communication on frequencies 4010V, 4090V, 4170V MHz on azimuth 297.9° toward Tantalur R, Hawaii and 3770V, 3850V MHz on azimuth 139.9° toward Mauna Loa, Hawaii.

HI-1142-CF-P-78 Same (KUP41) 53 South Church St., Wailuku, (Maui) Hawaii. Lat. 20°53'24" N., Long. 156°30'21" W. C.P. to add frequencies 4130H and 3970H MHz toward Ulupalakua, Hawaii.

HI-1143-CF-P-78 Same (new) Mauna Loa Mauna Loa Mountain, (Hawaii) Hawaii. Lat. 19°35'11" N., Long. 155°27'28" W. C.P. for a new station on frequencies 4050V, 4130V MHz on azimuth 320.2° toward Ulupalakua, Hawaii, 3970V, 3730V MHz on azimuth 67.8° toward Hilo, Hawaii.

HI-1144-CF-P-78 Same (KUR98) 115 Kalakaua St., Hilo, (Hawaii) Hawaii. Lat. 19°43'41" N., Long. 155°05'26" W. C.P. to add a new point of communication on frequencies 4170H and 4090H MHz on azimuth 247.9° toward Mauna Loa, Hawaii.

FL-1147-CF-P-78 General Telephone Co. of Florida (KI065) Pine Place and Bamboo Lane, Sarasota, (Sarasota) Fla. Lat. 27°20'06" N., Long. 82°32'10" W. C.P. to replace transmitters and change frequencies from 6197.2V to 6345.5H MHz and 6315.9V to 6404.8H MHz toward Nokomis, Fla.

FL-1148-CF-P-78 General Telephone Co. of Florida (KPP64) 1.8 miles east of Laurel Nokomis, (Sarasota) Fla. Lat. 27°08'15" N., Long. 82°25'45" W. C.P. to change frequencies 5945.2V and 6063.8V MHz to 6093.5V and 6152.8V MHz toward Sarasota, Fla., replace transmitters on 5974.8V and 6093.5V MHz on azimuth 117.8° toward Port Charlotte, Fla.

WY-1168-CF-P-78 American Telephone and Telegraph Company (KOU88) 1919 Capitol Ave., Cheyenne, (Laramie) Wyoming. Lat. 41°08'11" N., Long. 104°49'0" W. C.P. to add frequency 4170V MHz toward Cheyenne Junction.

WY-1169-CF-P-78 Same (KOU87) Cheyenne Junction 7 miles SW. of Cheyenne, (Laramie) Wyo. Lat. 41°02'54" N., Long. 104°53'29" W. C.P. to add frequencies 4130 H MHz toward Cheyenne, Wyo. and 4130V MHz toward Buckhorn Mountain, Wyo.

CO-1170-CF-P-78 Same (KAC61) Buckhorn Mountain 8 miles west of Bellvue, (Larimer) Colo. Lat. 40°37'04" N., Long. 105°19'42" W. C.P. to add frequency 4170V MHz toward Cheyenne Junction.

UT-1171-CF-P-78 Same (KOB26) 3100 Kennedy Dr., Salt Lake City, (Utah) Utah. Lat. 40°45'0" N., Long. 111°48'03" W. C.P. to add frequency on 11175H MHz toward Salt Lake City, Utah.

UT-1172-CF-P-78 Same (KRR69) 70 South State St., Salt Lake City, (Salt Lake) Utah. Lat. 40°46'03" N., Long. 111°53'16" W. C.P. to add frequency on 11345H MHz toward Salt Lake City Junction, Utah.

UT-1181-CF-P-78 Mountain States Telephone and Telegraph Co. (KXR39) Little Creek 7.8 miles SE. of Hurricane, (Washington) Utah. Lat. 37°05'47" N., Long. 113°11'11" W. C.P. to add a new point of communication on 2170V MHz on azimuth 121.6° toward Colorado City, Utah.

MS-1185-CF-P-78 American Telephone and Telegraph Co. (KKN22) 201 E. Capital St., Jackson, (Hinds) Miss. Lat. 32°17'58" N., Long. 90°11'09" W. C.P. to add frequency 4030V MHz and change V to H on 3770, 3850, 3930, 4010, 4290, and 4170, MHz, change H to V on frequencies 3710, 3790, 3870, and 3950 MHz toward Cynthia, Miss.

MS-1186-CF-P-78 Same (KRT25) 8 miles SW. of Canton, (Madison) Miss. Lat. 32°33'52" N., Long. 90°10'42" W. C.P. to add frequency on 4030V MHz toward Cynthia, and Pickens, Miss.

TX-1160-CF-P-78 The Western Union Telegraph Co. (WPE48) Olmos Towers Bldg., San Antonio, Tex. (Lat. 29°27'54" N., Long. 98°28'41" W.) construction permit for new point of communication, 11015V MHz towards San Antonio 2, Tex. on azimuth 195.8°.

TX-1161-CF-P-78 Same (new) 205/207 E. Travis Street, San Antonio, Tex. (Lat. 29°25'39" N., Long. 98°29'25" W.) construction permit for new station, 11465V MHz towards San Antonio, Tex. on azimuth 15.9°.

TX-1084-CF-P-78 Andrews Tower Rental, Inc. (new) Agnes, Tex. (Lat. 32°58'37" N., Long. 97°46'59" W.) Construction permit for new station—6226.9H, 6286.2H, and 6345.5H MHz toward Bowie, Tex., on azimuth 353.8°.

IN-1096-CF-P-78 Video Service Co. (KSP 64) 0.8 mile NW. of Monticello, Ind. (Lat. 40°45'00" N., Long. 86°47'03" W.) Construction permit to add 6271.4H MHz toward W. Lafayette, Ind., via power split.

OK-1106-CF-P-78 United Video, Inc. (new) Tulsa city hall, 200 Civic Center, Tulsa, Okla. (Lat. 36°09'01" N., Long. 95°59'43" W.) Construction permit for new station—11665H MHz toward Tulsa CATV, Okla., on azimuth 123.7°.

CA-1111-CF-P-78 American Television & Communications Corp. (KTR 46) Frazier Mountain, 7 miles West of Gorman, Calif. (Lat. 34°46'30" N., Long. 118°58'05" W.) Construction permit to add 5945.2V, 6004.5V, 6063.8V, 6123.1V, 5974.8H, 6034.2H, 6093.5H and 6212H MHz toward Broadcast Peak, Calif., on azimuth 253.3°.

MS-1187-CF-P-78 American Telephone and Telegraph Co. (KRT26) 0.3 miles SW. of Cynthia, (Hinds) Miss. Lat. 32°23'36" N., Long. 90°15'21" W. C.P. to add frequency on 4070V MHz toward Jackson, and Canton, Miss. Change V to H on frequencies 3730, 3810, 3890, 3970, 4050, and 4130 MHz. Change H to V on frequencies 3750, 3830, 3910, and 3990 MHz toward Jackson, Miss.

MS-1188-CF-P-78 Same (KLN22) 7.6 miles West of Pickets, (Yazoo) Miss. Lat. 32°52'11" N., Long. 90°06'04" W. C.P. to add frequency on 4070V MHz toward Canton, Miss.

NC-1182-CF-TC-(12)-78 Norfolk Carolina Telephone Co. Application for transfer of control from Norfolk Telephone Co., transferor to United Telecommunications, Inc., Transferee for the following stations.

KJG96 Elizabeth City, N.C.
KJG97 Coinjock, N.C.
WGH94 Corolla, N.C.
KJG98 Mame, N.C.
KJG99 Kill Devil Hills, N.C.
KJH20 Manteo, N.C.
WBB369 Bodie Island, N.C.
KVI25 Waves, N.C.
KVI24 Buxton, N.C.
KSV96 Hertford, N.C.
WGI41 Welch, N.C.
KSV95 Edenton, N.C.

CORRECTIONS

911-CF-P-78 Mountain States Telephone and Telegraph Co. Correct entry to read: (KPC67) All other particulars remain the same as reported on Public Notice No. 892 January 9, 1978.

[FR Doc. 78-3827 Filed 2-9-78; 8:45 am]

[6712-01]

[Report No. I-434]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications
Accepted for Filing

FEBRUARY 6, 1978.

The Applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further ex-

amination, it is determined they are defective and not in conformance with the Commission's Rules, Regulations and its Policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS
COMMISSION,

WILLIAM J. TRICARICO,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

NJ, 270-DSE-R-78 RCA Corp., Princeton, NJ (WD49). Renewal of this station license from: March 8, 1978 to: March 8, 1979.

OH, 276-DSE-P/L-78 Perry Cablevision, Inc., New Lexington, OH. Authority to construct, own, and operate a domestic communications satellite receive-only Earth Station at this location. Lat. 39°43'01" N., Long. 82°11'19" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 5-meter antenna.

NC, 283-DSE-P/L-78 Tar River Cable TV, Inc., Rocky Mount, NC. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 35°55'30" N., Long. 77°50'20" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 5-meter antenna.

FL, 284-DSE-P/L-78 Teleprompter Corp., New Smyrna Beach, FL. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 28°58'34" N., Long. 80°56'43" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 6-meter antenna.

WY, 285-DSE-P/L-78 Dubois Community Cable Television, Inc., Dubois, WY. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 43°31'38" N., Long. 109°38'00" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 4.5-meter antenna.

CA, 286-DSE-P-78 Community Television of Southern California, Los Angeles, CA. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 34°05'51" N., Long. 118°17'03" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 10-meter antenna.

CO, 287-DSE-P/L-78 Cable TV of Durango, Inc., Durango, CO. Authority to construct, own, and operate a domestic communications satellite receive-only Earth Station at this location. Lat. 37°16'46" N., Long. 107°52'37" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 5-meter antenna. AK, 288-DSE-P-78 Alaska Public Television, Inc., Anchorage, AK. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 61°17'50" N., Long. 149°26'34" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 10-meter antenna.

ND, 289-DSE-P/L-78 Meyer Broadcasting Co., Bismarck, ND. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 46°48'24" N., Long. 100°47'10" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 5-meter antenna.

KS, 290-DSE-P/L-78 American Satellite Corp., Wichita, KS. Authority to con-

struct and operate a domestic communications receive-transmit Earth Station at this location. Lat. 37°37'26" N., Long. 97°16'51" W. Rec. freq. 3700-4200 MHz. Trans. freq. 5925-6425 MHz. Emission 90F9Y. With a 5-meter antenna.

PA, 291-DSE-P/L-78 American Satellite Corp., Essington, PA. Authority to construct and operate a domestic communications receive/transmit Earth station at this location. Lat. 39°52'22" N., Long. 75°15'30" W. Rec. freq. 3700-4200 MHz. Trans. freq. 5925-6425 MHz. Emission 90F9Y. With a 5-meter antenna.

TN, 292-DSE-P-78 Pulaski Multiple Channel Cable Systems, Inc., d.b.a. Fayetteville Community TV, Fayetteville, TN. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 35°09'50" N., Long. 86°34'18" W. Rec. freq. 3700-4200 MHz. Emission 36000F9. With a 4.5-meter antenna.

TX, 293-DSE-P/L-78 Television Cable Services, Inc., d.b.a. Great Plains Community Television, Perryton, TX. Authority to construct, own, and operate a domestic communications satellite receive-only Earth station at this location. Lat. 36°22'38.1" N., Long. 100°48'22.6" W. Rec. freq. 3700-4200 MHz. Emission 34000F9. With a 4.5-meter antenna.

[FR Doc. 78-3828 Filed 2-9-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

FIRST STEUBEN BANCORP, INC.

Acquisition of Bank

First Steuben Bancorp, Inc., Toronto, Ohio, has applied for the Board's approval under 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Community National Bank, Flushing, Ohio. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 1, 1978.

Board of Governors of the Federal Reserve System, February 2, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-3783 Filed 2-9-78; 8:45 am]

[6210-01]

GIBSON BANCSHARES CORP.

Formation of Bank Holding Company

Gibson Bancshares Corp., Gibson City, Ill., has applied for the Board's approval under § 3(a)(1) of the Bank

Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank & Trust Co. in Gibson City, Gibson City, Ill. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 1, 1978.

Board of Governors of the Federal Reserve System, February 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-3814 Filed 2-9-78; 8:45 am]

[6210-01]

HOME STATE BANCSHARES, INC.

Formation of Bank Holding Company

Home State Bancshares, Inc., McPherson, Kans., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 85.42 percent of the voting shares of Home State Bank & Trust Co. of McPherson, Kans. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 3, 1978.

Board of Governors of the Federal Reserve System, February 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-3815 Filed 2-9-78; 8:45 am]

[6210-01]

MIZRAHI HOLDINGS ASSOCIATION, UNITED
MIZRAHI BANK LTD.

Formation of Bank Holding Company

Mizrahi Holdings Association, Tel Aviv, Israel, and United Mizrahi Bank Ltd., Tel Aviv, Israel, have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring 70 percent or more of the voting shares of UMB Bank & Trust Co., New York, N.Y., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than March 2, 1978.

Board of Governors of the Federal Reserve System, February 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-3784 Filed 2-9-78; 8:45 am]

[6210-01]

ROYAL TRUST BANK CORP., ROYAL TRUSTCO LTD.

Acquisition of Bank

Royal Trust Bank Corp., Miami, Fla., and Royal Trustco Ltd., Ottawa, Canada, have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 51 percent or more of the voting shares of Baymeadows Bank, Jacksonville, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 1, 1978.

Board of Governors of the Federal Reserve System, February 2, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-3785 Filed 2-9-78; 8:45 am]

[6820-23]

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D-151]

PUBLIC BUILDINGS AND SPACE

Redesignation of Federal building

1. *Purpose.* This bulletin announces the redesignation of a Federal building.

2. *Expiration date.* This bulletin expires April 30, 1978. However, the building redesignation announced by this bulletin will remain in effect until canceled or superseded.

3. *Redesignation.* The name of the building being redesignated is as follows:

FORMER NAME
U.S. Post Office and Courthouse, Willow and Broadway Streets, Beaumont, TX 77701.

NEW NAME
Jack Brooks Federal Building, U.S. Post Office and Courthouse, Willow and Broadway Streets, Beaumont, TX 77701.

Dated: January 19, 1978.

JAY SOLOMON,
Administrator of
General Services.

[FR Doc. 78-3800 Filed 2-9-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEES

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the month of March 1978:

MENTAL HEALTH SMALL GRANT COMMITTEE

March 22-25; 1:00 p.m., Board Room, Council Room, and The Cabinet Room, The Shoreham Hotel, 2500 Calvert Street NW., Washington, D.C. 20008. Open, March 22, 1-2 p.m. Closed, otherwise. Contact, Mary E. Enyart, Room 10C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4337.

Purpose: The Committee is charged with the initial review of small grant applications for Federal assistance in all disciplines relevant to the National Institute of Mental Health and for small grant projects submitted for support to the other Institutes of the Alcohol, Drug Abuse, and Mental Health Administration, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1 p.m.-2 p.m., March 22, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5 U.S. Code and section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

BOARD OF SCIENTIFIC COUNSELORS, NIMH

March 30-31; 9:30 a.m., Building 36, Conference Room 1B-07, National Institutes of Health, Bethesda, Md. 20014. Open, March 30, 9:30-10 a.m. Closed, otherwise. Contact, Dr. John C. Eberhart, Building 36, Room 1A-05, National Institutes of Health, Bethesda, Md. 20014, 301-496-3501.

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: The Board will meet in Building 36, Room 1B-07, Bethesda, Md., for approximately 30 minutes for a report by the Director and Deputy Director of Intramural Research, NIMH, on recent administrative developments. The remainder of the two-day session will be devoted to the review of intramural research projects in experimental and physiological psychology and in psychiatric genetics, and the evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5 U.S. Code and section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact person listed above. The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of the committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: February 2, 1978.

CAROLYN T. EVANS,
Committee Management Officer,
Alcohol, Drug Abuse, and
Mental Health Administration.

[FR Doc. 78-3368 Filed 2-9-78; 8:45 am]

[1505-01]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

Correction

In FR Doc. 78-915, appearing at page 1998 in the issue of Friday, January 13, 1978, the fifth line of the first column on page 1999 should read, "mittee Act (Pub. L. 92-463, 86 Stat.)."

[4110-03]

Food and Drug Administration

[Docket No. 77F-0368]

DESOTO, INC.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: DeSoto, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of components of a flexible laminated pouch intended to contact food under retort conditions.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3297) has been filed by DeSoto, Inc., 1700 S. Mount Prospect Road, Des Plaines, Ill. 60018, proposing that the food additive regulations be amended to provide for the safe use of components of a flexible laminated pouch intended to contact food under retort conditions. The petitioned food-contact surface is a polypropylene film in compliance with § 177.1520 (21 CFR 177.1520). The adhesive component of the system is a polyester adhesive manufactured from polyethylene phthalate polymer utilizing components listed in § 177.1630 Polyethylene phthalate polymers (21 CFR 177.1630), hexamethylene diol, neopentyl glycol and adipic acid and reacted with the toluene diisocyanate adducts of 1,1,1-trimethylolpropane and 1,3-butylene glycol.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 31, 1978.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc. 78-3369 Filed 2-9-78; 8:45 am]

[4110-83]

Health Resources Administration

DETERMINATION OF POPULATION OF HEALTH SERVICE AREAS

Correction

FR Doc. 77-25342 published as a Notice in the FEDERAL REGISTER of September 2, 1977 (42 FR 44288-44289) contained a list of health service areas with their populations. Several errors were made on this list.

The purpose of this Notice is to correct the population figures for Kansas Health Service Areas 2 and 3, Massachusetts Health Service Areas 1 and 3, and North Carolina Health Service Area 1 as follows:

Page 44289 the list of populations for the State of Kansas is amended as follows:

AREA 2 POPULATION

Replace 591,100 with 577,300

AREA 3 POPULATION

Replace 787,400 with 801,200

State of Massachusetts is amended as follows:

AREA 1 POPULATION

Replace 820,594 with 822,480

AREA 3 POPULATION

Replace 480,558 with 478,672

State of North Carolina is amended as follows:

AREA 1 POPULATION

Replace 934,922 with 939,700

Dated: January 31, 1978.

HENRY A. FOLEY,
Administrator.

[FR Doc. 78-3514 filed 2-9-78; 8:45 am]

[4110-84]

Health Services Administration

ASSISTANCE UNDER THE SOCIAL SECURITY ACT MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES PROJECT GRANTS TO INSTITUTIONS OF HIGHER LEARNING

Announcement of Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that competitive applications are now being accepted for grants in fiscal year 1978 for specialized training in maternal and child health of several categories of health professionals. The grants are offered under the authority of sections 503(2), 504(2), and 511 of the Social Security Act (42 U.S.C. 703(2), 704(2), and 711) which authorize the Secretary of Health, Education, and Welfare to make grants to institutions of higher learning for that purpose. Regulations

for the program appear at 42 CFR 51a, Subpart D.

"Institution of higher learning" is defined as any college or university accredited by a recognized body or bodies approved for such purpose by the U.S. Commissioner of Education, and any teaching hospital which has higher learning among its purposes and functions and which has a formal affiliation with an accredited school of medicine and a full time academic medical staff holding faculty status in such school of medicine.

Grants to eligible applicants may be made by the Secretary for projects which will best promote the purposes of sections 503, 504, and 511 of the Act, taking into account:

1. The relative extent to which the project will contribute to a nationwide distribution of needed services and training with special emphasis on how the applicant will place graduates in State and local health departments and the extent to which the applicant has been successful in recruiting trainees or fellows from minority groups.

2. The capability of the applicant to provide training of high quality and effectiveness.

3. The relative extent to which the project will provide more effective utilization of personnel currently providing health services to mothers and children.

4. The extent to which the project will assist in the development of new information or innovative methods relating to the provision of maternal and child health and crippled children's services.

5. The degree to which the project provides for the stipulated requirements as set forth in Regulations (42 CFR Part 51a. 405).

A document regarding intended disbursement of funds is available to applicants from:

Health Services Training, Bureau of Community Health Services, Health Services Administration, Parklawn Building, Room 7-36, 5600 Fishers Lane, Rockville, Md. 20857.

Consultation and technical assistance relative to the development of an application is also available upon request to that address.

Completed applications must be received at the above address by March 31, 1978, and will be subject to competitive, objective review.

The amount available for new maternal and child health training grants under this announcement is \$4,275,000. Approximately 26 grants will be awarded.

Dated: January 23, 1978.

GEORGE I. LYTHCOTT,
Administrator,
Health Services Administration.

[FR Doc. 78-3515 Filed 2-9-78; 8:45 am]

[4110-84]

SUDDEN INFANT DEATH SYNDROME PROGRAM

Announcement of Competitive Grant Applications

The Bureau of Community Health Services (BCHS), Health Services Administration, announces that competitive applications for Sudden Infant Death Syndrome (SIDS) Information and Counseling project grants will be accepted until April 1, 1978, under the grant program established by section 1121(b) of the Public Health Service Act (42 U.S.C. 300c-11, as added by section 3(a) of the Sudden Infant Death Syndrome Act of 1974, Pub. L. 93-270).

Section 1121 of the Public Health Service Act authorizes project grants to public and nonprofit private entities for support of selected SIDS projects for the collection, analysis, and furnishing of information (derived from postmortem examination and other means) relating to the causes of SIDS and the provision of information and counseling to families affected by SIDS.

Regulations applicable to this program are set forth at Subpart E of Part 51a of Title 42, Code of Federal Regulations "Project Grants for SIDS Information and Counseling," published on June 6, 1975, (40 FR 24436).

SCOPE OF THIS PROGRAM ANNOUNCEMENT

This program announcement identifies the general program objectives and funding priorities of the Project Grants for SIDS Information and Counseling Program for fiscal year 1978.

A. PROGRAM PURPOSES

There are an estimated 6,500-8,000 cases of SIDS in the United States each year. These deaths occur in all geographical areas and socioeconomic classes, as well as in all ethnic and racial groups. The purposes of the project grants are to provide comprehensive, coordinated and humanitarian services to families whose infants have died suddenly and unexpectedly and to learn more about this syndrome. The SIDS program, administered by the Office of Maternal and Child Health in BCHS, currently provides grant funds to 29 organizations in 25 States.

B. ELIGIBLE APPLICANTS

Any public or nonprofit private entity is eligible to apply for a grant under this announcement. Individuals are not eligible applicants. Applications with evidence of active support of the various community resources necessary to provide a comprehensive approach to this serious problem are encouraged.

C. AVAILABLE FUNDS

Of the \$2,802,000 approved under a continuing resolution by the Congress for the SIDS program in fiscal year 1978, the SIDS program expects to award \$2,072,260 for new and competing renewal grants. This sum includes \$200,000 in competitive funds to assist federally-funded projects whose service boundaries currently are less than statewide to extend their services. A new grant is the initial grant made in support of a project requested in an application. A competing renewal grant continues a project beyond the project period for which the initial grant was made.

It is expected that approximately 35 new and renewal grants will be awarded pursuant to this announcement. The range of funds per grant is expected to be from \$35,000 to \$140,000, with the average award expected to be \$60,000. Generally, projects will be supported for periods of 1 to 3 years. The funds currently available will sustain the budget of the new and renewal awards for a 1-year period. Support for any additional time remaining in the project period depends on funds available and on the Secretary's assessment of the grantee's satisfactory performance on the project for which the grant was awarded and of the likelihood of the grantee's continued contribution to the priorities of the SIDS program.

D. PROGRAM OBJECTIVES AND PRIORITIES FOR FUNDING

Regulations under the Sudden Infant Death Syndrome Act call for programs which provide services, including: (1) autopsies in sudden and unexpected deaths of infants, (2) use of SIDS as a cause of death on the death certificate where appropriate, (3) prompt notification of the parents about the cause of death, within a 24 hour period, wherever possible, (4) information and voluntary counseling of families affected by a SIDS loss, (5) consultation and arrangements with official and voluntary community resources for referral of families affected by SIDS and for furnishing information and suggestions for dealing with SIDS cases to such resources and (6) the collection and dissemination of information on SIDS cases in the project area to appropriate public officials and interested members of the general public in the project area.

Priority will be given to projects that provide statewide coordinated services: (1) to geographic areas with a population of one million or more persons, (2) located in areas with an infant mortality rate higher than the national average, (3) have community resources available which enable the projects to meet the requirements of the program, (4) are assured of community support, and (5) provide indi-

cations of how continuation of services will be maintained after Federal funding is concluded.

E. THE APPLICATION PROCESS

A-95 Clearinghouse Notice: In compliance with the Department of Health, Education, and Welfare's implementation of Office of Management and Budget Circular No. A-95 Revised, applicants which request grant support must, prior to submission of an application, notify both the State and Areawide A-95 Clearinghouses of their intent to apply for Federal assistance. If the application is for a statewide project which does not affect areawide or local planning and programs, the notification need be sent only to the State Clearinghouse (listed at 42 FR 2210, January 10, 1977).

It is strongly recommended that the clearinghouses be notified at least sixty (60) days before the submission deadline date for receipt of applications. Applications will not be formally reviewed without clearinghouse comments or verification that no comments were made within the applicable period available to the clearinghouse for comment. Comments received from the clearinghouse should be included with the application.

Application Consideration: Applications which do not conform to this announcement, are late, or are incomplete, will not be accepted for review and applicants will be notified accordingly. Otherwise, all applications will be notified accordingly. Otherwise, all applicants will be subject to a competitive review and evaluation in accordance with the established objective review process.

FOR ADDITIONAL PROGRAM INFORMATION, PLEASE WRITE OR TELEPHONE:

Mrs. Geraldine J. Norris, SIDS Program Director, BCHS Parklawn Building, Room 7-15, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-6600.

Once the Secretary has reached a decision to disapprove competing grant applications, or if funds are not available to support all approved competing grant applications, the unsuccessful applicants will be notified.

F. CRITERIA FOR REVIEW AND EVALUATION OF APPLICATIONS

Competing grant applications will be reviewed and evaluated against the criteria which are delineated in SIDS program regulations (42 CFR 51a, Subpart E). Applicants will be furnished with application forms and instructions (see item H of this notice).

G. CLOSING DATE FOR RECEIPT OF APPLICATIONS

The closing date for receipt of applications under this program announcement is April 1, 1978. Applications may be mailed or hand delivered. Hand delivered applications are accepted during the usual working hours of 8:30 a.m. and 5 p.m.

An application will be considered to have arrived by the closing date if:

1. The application is in the Grants Management Branch (see item H, below) on or before the announced closing date, or
2. The application is postmarked at least two (2) days prior to the announced closing date.

H. AVAILABILITY OF APPLICATION FORMS

Application kits, including all necessary forms, instructions and information may be obtained from, and completed applications returned to, the address below:

Grants Management Branch
Bureau of Community Health Services
Room 6-49, Parklawn Building
5600 Fishers Lane
Rockville, Md. 20857

Dated: January 23, 1978.

GEORGE I. LYTHCOTT,
Administrator,
Health Services Administration.

[FR Doc. 78-3515 Filed 2-9-78; 8:45 am]

[4110-08]

National Institutes of Health

AGING REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on March 24, 1978, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Md.

The meeting will be open to the public from 9 a.m. to 10 a.m. for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 10 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Suzanna H. Porter, Committee Management Officer, NIA, Building 31, Room 5C07, National Institutes of

Health, Bethesda, Md., Area Code 301, 496-5345, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3407 Filed 2-9-78; 8:45 am]

[4110-08]

ALLERGY AND CLINICAL IMMUNOLOGY RESEARCH COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Research Committee, National Institute of Allergy and Infectious Diseases on March 6, 1978, at the National Institutes of Health, Building 31C, Conference Room 7, Bethesda, Md.

This meeting will be open to the public from 9 a.m. to 10:30 a.m. on March 6 to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Committee will be closed to the public from 10:30 a.m. to adjournment on March 6 for the review, discussion, and evaluation of individual grant applications. These applications, and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, NIAID, Building 31, Room 7A32, National Institutes of Health, Bethesda, Md. 20014, telephone 301-496-5717, will provide summaries of the meeting, and rosters of the Committee members.

Dr. Luz A. Froehlich, Executive Secretary, Allergy and Clinical Immunology Research Committee, NIAID, NIH, Westwood Building, Room 703, telephone 301-496-7131, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3402 Filed 2-9-78; 8:45 am]

[4110-08]

BIOMEDICAL LIBRARY REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee, National Library of Medicine, on March 20-21, 1978, from 8:30 a.m. to 5 p.m. on March 20, and from 8:30 a.m. to adjournment on March 21, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Md.

This meeting will be open to the public from 8:30 to 11 a.m. on March 20 for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 20 from 11 a.m. to 5 p.m., and from 8:30 a.m. to adjournment on March 21 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Division of Biomedical Information Support, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Md. 20014, telephone number 301-496-4191, will provide summaries of the meeting, rosters of committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.348, 13.349, 13.351, 13.352, 13.881—National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3405 Filed 2-9-78; 8:45 am]

[4110-08]

CLINICAL APPLICATIONS AND PREVENTION ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, March 23-24, 1978, Federal Building, Conference Room 6C01, Bethesda, Md.

This meeting will be open to the public on March 23, from 9 a.m. to 10:30 a.m. when the current progress of the Multiple Risk Factor Interven-

tion Trial will be discussed. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 23, from 10:30 a.m. to adjournment, and on March 24, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract renewal proposals. The proposals and the discussions could reveal confidential trade secrets and personal information such as privileged unblinded medical data about individuals associated with the proposals.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of meetings and rosters of committee members. Dr. William J. Zukel, Executive Secretary of the Committee, Federal Building, Room 4C10, Bethesda, Md. 20014, phone 301-496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3406 Filed 2-9-78; 8:45 am]

[4110-08]

CONTRACT PROPOSALS AND GRANT APPLICATIONS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building

31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of committee: Biometry and Epidemiology Contract Review Committee.

Dates: March 6-7, 1978; 7 p.m.

Place: Building 31A, Conference Room 4, National Institutes of Health.

Times: Open: March 6, 7 p.m. to 10:30 p.m.; Closed: March 7, 8:30 a.m. to 5 p.m.

Closure reason: To review research contract proposals.

Executive secretary: Mr. Harvey Geller, Landow Building, Room 5C19, National Institutes of Health, phone 301-496-6014.

(Catalog of Federal Domestic Assistance No. 13.393, National Institutes of Health.)

Name of committee: Cancer Control Grant Review Committee.

Dates: March 6-7, 1978; 8:30 a.m.

Place: Building 31C, Conference Room 8, National Institutes of Health.

Times: Open: March 6, 8:30 a.m. to 9 a.m.; Closed: March 6, 9 a.m. to 5 p.m.; and March 7, 8:30 a.m. to adjournment.

Closure reason: To review research grant applications.

Executive secretary: Dr. Robert F. Browning, Room 7A07, Blair Building, National Institutes of Health, phone 301-427-7944.

(Catalog of Federal Domestic Assistance No. 13.399, National Institutes of Health.)

Name of Committee: Developmental Therapeutics Committee.

Date: March 9, 1978, 9 a.m.

Place: Blair Building, Room 110, 8300 Colesville Road, Silver Spring, Md. 20910.

Times: Open: March 9, 9 a.m. to 9:30 a.m.; closed: March 9, 9:30 a.m. to adjournment.

Closure reason: To review research contract proposals.

Executive Secretary: Dr. J. A. R. Mead, Blair Building, Room 5A03, National Institutes of Health, phone 301-427-7263.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Name of Committee: Subcommittee for Bladder Cancer of the Bladder and Prostatic Cancer Review Committee.

Dates: March 13-14, 1978, 8:30 a.m.

Place: Landow Building, Room C418, 7910 Woodmont Avenue, Bethesda, Md. 20014.

Times: Open: March 13, 8:30 a.m. to 11 a.m.; agenda/open portion: Review of progress reports; closed: March 13, 11 a.m. to 5 p.m. and March 14, 8:30 a.m. to adjournment.

Closure reason: To review research grant applications.

Executive Secretary: Dr. William E. Straile, Westwood Building, Room 853, National Institutes of Health, phone 301-496-7194.

(Catalog of Federal Domestic Assistance Nos. 13.393, 13.394, 13.395, National Institutes of Health.)

Name of committee: Diagnostic Research Advisory Group.

Dates: March 15-16, 1978, 8:30 a.m.

Place: Building 31C, Conference Room 10, National Institutes of Health.

Times: Open: March 15, 11 a.m. to 5 p.m. and March 16, 8:30 a.m. to adjournment; agenda/open portion: General business related to cancer diagnosis contract research program and review of current contracts; closed: March 15, 8:30 a.m. to 11 a.m.

Closure reason: To review research contract proposals.

Executive secretary: Dr. R. Quentin Blackwell, Building 31, Room 3A10, National Institutes of Health, phone 301-496-1591.

(Catalog of Federal Domestic Assistance No. 13.394, National Institutes of Health.)

Name of committee: Subcommittee for Prostatic Cancer of the Bladder and Prostatic Cancer Review Committee.

Dates: March 20, 1978, 8:30 a.m.

Place: Building 31C, Conference Room 8, National Institutes of Health.

Times: Open: March 20, 8:30 a.m. to 9 a.m.; closed: March 20, 9 a.m. to adjournment.

Closure reason: To review research grant applications.

Executive secretary: Dr. Andrew Chiarodo, Westwood Building, Room 853, National Institutes of Health, phone 301-496-7194.

(Catalog of Federal Domestic Assistance Nos. 13.393, 13.394, 13.395, National Institutes of Health.)

Name of Committee: Cancer Center Support Review Subcommittee of the Clinical Cancer Program Project and Cancer Centers Support Review Committee.

Dates: March 23-24, 1978, 8:30 a.m.

Place: Building 31C, Conference Room 6, National Institutes of Health.

Times: Open: March 23, 8:30 a.m. to 10 a.m.; closed: March 23, 10 a.m. to 6 p.m. and March 24, 8:30 a.m. to adjournment.

Closure reason: To review research grant applications.

Executive Secretary: Dr. Robert Manning, Westwood Building, Room 803, National Institutes of Health, phone 301-496-7721.

(Catalog of Federal Domestic Assistance No. 13.397, National Institutes of Health.)

Name of Committee: Breast Cancer Task Force Committee.

Dates: March 29-31, 1978, 8:30 a.m.

Place: March 29 (Wilson Hall, Building 1, National Institutes of Health) and March 30-31 (Holiday Inn, Bethesda, Md.).

Times: Open: March 29, 8:30 a.m. to 5 p.m.; closed: March 30, 8:30 a.m. to 5 p.m. and March 31, 8:30 a.m. to adjournment.

Closure reason: To review research contract proposals.

Executive Secretary: Dr. D. Jane Taylor, Landow Building, Room 4A22, National Institutes of Health, phone 301-496-6178.

(Catalog of Federal Domestic Assistance Nos. 13.394, 13.395, 13.396, National Institutes of Health.)

Name of Committee: Clinical Trials Committee.

Dates: March 30-31, 1978; 8:30 a.m.

Place: Building 31C, Conference Room 8, National Institutes of Health.

Times: Open: March 30, 8:30 a.m. to 9 a.m. and March 31, 8:30 a.m. to 9 a.m.; closed: March 30, 9 a.m. to 5 p.m. and March 31, 9 a.m. to adjournment.

Closure reason: To review research contract proposals.

Executive secretary: Dr. Jane E. Henney, Landow Building, Room C808, National Institutes of Health, phone 301-496-2522.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Name of Committee: Virus Cancer Program Scientific Review Committee.
 Dates: March 30-31, 1978; 9 a.m.
 Place: Landow Building, Room 4C18, 7910 Woodmont Avenue, Bethesda, Md. 20014.
 Times: Open: March 30, 9 a.m. to 9:30 a.m.; closed: March 30, 9 a.m. to 5 p.m. and March 31, 9 a.m. to adjournment.
 Closure reason: To review research contract proposals.

Executive secretary: Dr. Wilna A. Woods, Landow Building, Room 9A08, National Institutes of Health. Phone 301-496-4533.

(Catalog of Federal Domestic Assistance No. 13.393, National Institutes of Health.)

Name of committee: Clinical Cancer Program Project Review Subcommittee of the Clinical Cancer Program Project and Cancer Center Support Review Committee.

Dates: March 30-April 1, 1978; 8:30 a.m.
 Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Md.
 Times: Open: March 30, 8:30 a.m. to 10:30 a.m.; closed: March 30, 10:30 a.m. to 5:30 p.m., March 31, 8:30 a.m. to 5:30 p.m., and April 1, 8:30 a.m. to adjournment.
 Closure reason: To review research grant applications.

Executive secretary: Dr. Louise G. Thomson, Westwood Building, Room 809, National Institutes of Health. Phone 301-496-7924.

(Catalog of Federal Domestic Assistance No. 13.397, National Institutes of Health.)

Name of committee: Committee on Cancer Immunobiology.

Dates: March 31, 1978; 2 p.m.
 Place: Building 10, Conference Room 4B14, National Institutes of Health.
 Times: Open: March 31, 2 p.m. to 2:30 p.m., and closed: March 31, 2:30 p.m. to adjournment.

Closure reason: To review research contract proposals.

Executive secretary: Mrs. Judith M. Whalen, Building 10, Room 4B17, National Institutes of Health. Phone 301-496-1791.

(Catalog of Federal Domestic Assistance No. 13.396, National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3404 Filed 2-9-78; 8:45 am]

[4110-08]

COMMITTEE ON CANCER IMMUNOTHERAPY

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the Committee on Cancer Immunotherapy, for March 1978, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md.

Some of these meetings will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Some of these meetings will be closed to the public as indicated below in accordance with provisions set forth

in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal personal information concerning individuals associated with the proposals.

Meeting dates: March 2, March 9, March 13, March 16, March 30, 1978.

Meeting place: Building 10, Room 4B14, National Institutes of Health.

Meeting times: Open—1:15 p.m.-1:45 p.m., each day; closed—1:45 p.m.-adjournment, each day.

Mrs. Marjories F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request.

Dr. George M. Steinberg, Executive Secretary, National Cancer Institute, Building 10, Room 4B09, National Institutes of Health, Bethesda, Md. 20014, 301-496-1791, will furnish substantive program information.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3401 Filed 2-9-78; 8:45 am]

[4110-08]

National Institutes of Health

INTERAGENCY PRIMATE STEERING COMMITTEE

General Announcement; Solicitation of Comments on a Proposed National Primate Plan

As a result of the critical need for monkeys and apes in biomedical research, along with the difficulty in acquiring many species of these animals, a steering committee was established at the National Institutes of Health to develop a unified approach to ensure short- and long-term availability of nonhuman primates. Since these animals are also important to the activities or other Federal agencies, the Assistant Secretary for Health, Department of Health, Education, and Welfare (DHEW) later expanded the Committee, and membership now includes representatives from the National Science Foundation, the Department of Defense, and five DHEW components: the Alcohol, Drug Abuse, and Mental Health Administration; the Center for Disease Control; the Food and Drug Administration; the Office of International Health; and the National Institutes of Health, the lead agency. Representatives of other agencies participate in the work of the Committee on an ad hoc basis. The Committee was given responsibility for the prepara-

tion of a plan to ensure adequate and continuing supplies of primates for essential biomedical research and health activities.

The Interagency Primate Steering Committee has completed preparation of a proposed National Primate Plan. This plan presents recommendations designed to structure, balance, and extend the many already existing programs of the Federal Government and others, together with the development of new programs to ensure that the requirements for nonhuman primates of all essential health activities can be met now and in the future. Specifically, increased conservation measures, additional programs of domestic primate production and the establishment of international arrangements to ensure a stable supply and long-term availability of primates from their countries of origin, are recommended.

Prior to placing this plan in final form, comments are hereby solicited from all interested parties. The final plan will be based, in part, on an evaluation of responses to this announcement.

Single copies of the proposed National Primate Plan may be obtained by writing to:

Executive Director, Interagency Primate Steering Committee, NIH Building, 14 G, Bethesda, Md. 20014.

Comments should be sent on or before April 11, 1978, to the above address.

Dated: February 7, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-3873 Filed 2-9-78; 8:45 am]

[4110-08]

MICROBIOLOGY AND INFECTIOUS DISEASES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Advisory Committee, National Institute of Allergy and Infectious Diseases on March 6, 1978, in Building 31C, Conference Room 9, at the National Institutes of Health, Bethesda, Md.

This meeting will be open to the public from 9 a.m. until 10:30 a.m. on March 6 to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting of the Committee will be closed to the public 10:30 a.m. to adjournment on March 6 for the review, discussion, and evaluation of individual grant applications and contract proposals.

These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, NIAID, National Institutes of Health, Building 31, Room 7A32, Bethesda, Md. 20014, 301-496-5717, will provide summaries of the meeting and rosters of the Committee members.

Dr. Thelma N. Fisher, Executive Secretary, Microbiology and Infectious Diseases Advisory Committee, NIAID, National Institutes of Health, Westwood Building, Room 706, Bethesda, Md. 20014, 301-496-7465, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.856, National Institutes of Health.)

Dated: February 1, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-3403 Filed 2-9-78; 8:45 am]

[4110-08]

NATIONAL CANCER INSTITUTE COMMITTEES

Renewals

The Director, National Institutes of Health, announces the merger on January 3, 1978, of the National Large Bowel Cancer Project Working Cadre and the National Pancreatic Cancer Project Working Cadre and the renewal of these committees as one under the new title of Large Bowel and Pancreatic Cancer Review Committee, under the authority of sections 410(a)(3) and 410A(a) of the Public Health Service Act (42 U.S.C. 286d and 286e). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI, and the Director, Division of Cancer Research Resources and Centers, NCI, advice on the planning and review of programs of research, and on the review of grant applications submitted in response to publication of research plans. The committee will terminate January 3, 1980, unless renewed by appropriate action as authorized by law.

Dated: January 31, 1978.

DONALD S. FREDRICKSON,
M.D., Director,
National Institutes of Health.

[FR Doc. 78-3408 Filed 2-9-78; 8:45 am]

[4110-08]

NATIONAL CANCER INSTITUTE COMMITTEES

Renewals

The Director, National Institutes of Health, announces the merger on January 3, 1978, of the Clinical Cancer Program Project Review Committee and the Cancer Center Support Grant Review Committee and the renewal of these committees as one under the new title of Clinical Cancer Program Project and Cancer Center Support Review Committee, under the authority of section 410A(a) of the Public Health Service Act (42 U.S.C. 286d). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI and the Director, Division of Cancer Research Resources and Centers, NCI, advice concerning merit review of applications for cancer center support grants and for clinical program project grants. This committee will terminate January 3, 1980, unless renewed by appropriate action as authorized by law.

Dated: January 31, 1978.

DONALD S. FREDRICKSON,
M.D., Director,
National Institutes of Health.

[FR Doc. 78-3409 Filed 2-9-78; 8:45 am]

[4110-08]

NATIONAL CANCER INSTITUTE COMMITTEES

Renewals

The Director, National Institutes of Health, announces the merger on January 3, 1978, of the National Bladder Cancer Project Working Cadre and the National Prostatic Cancer Project Working Cadre and the renewal of these committees as one under the new title of Bladder and Prostatic Cancer Review Committee, under the authority of sections 410(a)(3) and 410A(a) of the Public Health Service Act (42 U.S.C. 286d and 286e). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI, and the Director, Division of Cancer Research Resources and Centers, NCI, advice on the planning and review of programs of research, and on the review of grant applications submitted in response to publication of research plans. The committee will terminate January 3, 1980, unless renewed by appropriate action as authorized by law.

Dated: January 31, 1978.

DONALD S. FREDRICKSON,
M.D., Director,
National Institutes of Health.

[FR Doc. 78-3410 Filed 2-9-78; 8:45 am]

[4110-12]

Office of the Secretary

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women, will hold its Child Care and Family Task Force meeting February 27, 1978, from 6 p.m. to 10 p.m., in Room 624D, HEW-Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. The agenda will include a briefing on child care and family issues within the Department of Health, Education, and Welfare.

Further information on the Committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone 202-245-8454.

This meeting is open to the public.

Dated: February 6, 1978.

SUSAN C. LUBICK,
Executive Director, Secretary's
Advisory Committee on the
Rights and Responsibilities of
Women.

[FR Doc. 78-3816 Filed 2-9-78; 8:45 am]

[4110-12]

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women, will hold its Health Task Force meeting on February 28, 1978 from 9 a.m. to 1 p.m., in Room 624-D, HEW-Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. The agenda will include discussion of HEW health issues.

Further information on the Committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone 202-245-8454.

This meeting is open to the public.

Dated: February 6, 1978.

*SUSAN C. LUBICK,
Executive Director, Secretary's
Advisory Committee on the
Rights and Responsibilities of
Women.*

[FR Doc. 78-3817 Filed 2-9-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-78-840]

TASK FORCE ON TENANT PARTICIPATION IN THE MANAGEMENT OF LOW-INCOME PUBLIC HOUSING

Meeting

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice is given announcing the fourth meeting date of the Task Force.

SUMMARY: The Secretary is announcing the fourth meeting and agenda for the Task Force on Tenant Participation in the Management of Low-Income Public Housing. Meetings are scheduled for February 26-28, 1978 and the agenda for the meetings are stated.

DATE OF FOURTH MEETING: The fourth meeting of the Task Force is scheduled to be held over a three-day period beginning on February 26, 1978 at 10 a.m. in Washington, D.C. at the Department of Housing and Urban Development, located at 451 Seventh Street SW., in Room 10233.

ADDRESS: James F. Anderson, Acting Director, Project Management Division, Office of Assisted Housing Management, Room 6248, or Joseph Smith, Director, Consumer Liaison Division, Office of Consumer Affairs, Room 4212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

James F. Anderson, 202-755-6429; Joseph Smith, 202-755-5360; or Donald McLain, 202-755-5333.

SUPPLEMENTARY INFORMATION: Meetings of the Task Force on Tenant Participation in the Management of Low-Income Public Housing have been scheduled for the dates and time indicated above. The two Working Groups are scheduled to meet on the first day and the next two days will be for the Task Force business. This will be the fourth full-session meeting convened by the Task Force as prescribed in its Charter. The first meeting of the Task Force was held over a two-day period

which began on November 7, 1977. The second meeting was also held over a two-day period which began on November 29, 1977. The third meeting was held over a four-day period which began on January 6, 1978 in Denver, Colo.

The agenda for the February meeting includes the following:

1. Minutes of the previous meeting.
2. Report from Working Groups.
3. Other Task Force business.

The meeting of the Task Force will be open to the public. Issued at Washington, D.C., February 7, 1978.

*JAY JANIS,
Acting Secretary, Department of
Housing and Urban Development.*

[FR Doc. 78-3886 Filed 2-9-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEF, TITLE AND RECORDS SECTION, DIVISION OF MANAGEMENT SERVICES, NEW MEXICO STATE OFFICE

Redelegation of Authority by State Director

Pursuant to the authority contained in section 1.1 of Bureau Order No. 701 dated July 23, 1964, as amended, authority is hereby redelegated to the Chief, Title and Records Section to take the below listed actions under sections 1.6(k) as to mining claim instruments filed for recordation with BLM under 43 CFR Part 3833:

- (1) Accept and record instruments meeting recordation requirements;
- (2) Notify owners to take curative actions to complete defective filings.
- (3) Reject instruments and void claims not filed within the prescribed time periods.

This delegation is effective January 1, 1978.

*MAXWELL T. LIEURANCE,
Acting State Director.*

Approved: February 2, 1978.

*ARNOLD E. PETTY,
Acting Associate.*

[FR Doc. 78-3738 Filed 2-9-78; 8:45 am]

[4310-84]

[M 39381]

MONTANA

Proposed Withdrawal and Reservation of Lands: Correction

FEBRUARY 1, 1978.

Notice of Proposed Withdrawal and Reservation of Lands under Serial No. M 39381, dated January 11, 1978, published as FR Doc. 78-1526 on pages 2767 and 2768 for the issue of January

19, 1978, is hereby corrected to add the following paragraphs:

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for hearing to the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Mont. 59107, by March 10, 1978. Upon determination by the State Director that a public hearing will be held, the time and place will be announced.

For a period of two years from January 11, 1978, the lands will be segregated from location and entry under the mining laws only, subject to existing valid rights, unless the application is rejected or the withdrawal is approved prior to that time. If the withdrawal is approved by the Secretary, the segregation will remain in effect for a period of 20 years from the date of such approval.

The 30-day period provided for the submission of comments concerning this proposed withdrawal is extended to March 10, 1978.

*ROLAND F. LEE,
Chief, Branch of Lands
and Minerals Operations.*

[FR Doc. 78-3739 Filed 2-9-78; 8:45 am]

[4310-84]

[NM 32646]

NEW MEXICO

Application

JANUARY 31, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Phillips Petroleum Co. has applied for one 4 1/4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 34 E.,
Sec. 27, E 1/4 NW 1/4 and SW 1/4 NW 1/4.

This pipeline will convey natural gas across 0.576 miles of public lands in Lea County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land

Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3740 Filed 2-9-78; 8:45 am]

[4310-84]

(NM 32642)

NEW MEXICO

Application

JANUARY 31, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Co. has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 8 W.,

Sec. 31, lot 8, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$.

This pipeline will convey natural gas across 0.49 miles of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3741 Filed 2-9-78; 8:45 am]

[4310-84]

(NM 32641)

NEW MEXICO

Application

JANUARY 31, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 28 N., R. 10 W.,

Sec. 9, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

This pipeline will convey natural gas across 0.044 miles of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc. 78-3742 Filed 2-9-78; 8:45 am]

[4310-84]

(NM 32610, 32649)

NEW MEXICO

Applications

JANUARY 31, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for two 4 $\frac{1}{2}$ -inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 7 W.,

Sec. 11, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 32 N., R. 12 W.,

Sec. 25, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

These pipelines will convey natural gas across 0.446 mile of public lands in Rio Arriba and San Juan Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3743 Filed 2-9-78; 8:45 am]

[4310-84]

(NM 32609, 32611 and 32612)

NEW MEXICO

Applications

FEBRUARY 1, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as

amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for three 4 $\frac{1}{2}$ -inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 10 W.,

Sec. 11, lot 13;

Sec. 13, lots 4 and 5;

Sec. 14, lot 1.

T. 31 N., R. 11 W.,

Sec. 5, lot 8.

These pipelines will convey natural gas across 0.399 miles of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3744 Filed 2-9-78; 8:45 am]

[4310-84]

(NM 32602 and 32647)

NEW MEXICO

Applications

FEBRUARY 1, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Phillips Petroleum Co. has applied for two 4 $\frac{1}{2}$ -inch and one 3 $\frac{1}{2}$ -inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 17 S., R. 27 E.,

Sec. 3, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 10, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and

SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 14, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ and

SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 23, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and

NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 15 S., R. 29 E.,

Sec. 31, lots 1, 2 and 3.

T. 16 S., R. 29 E.,

Sec. 4, lots 10, 15 and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 9, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 16 S., R. 30 E.,

Sec. 27, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 28, E $\frac{1}{2}$ SE $\frac{1}{4}$.

These pipelines will convey natural gas across 5.074 miles of public lands in Chaves and Eddy Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will

be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3745 Filed 2-9-78; 8:45 am]

[4310-84]

[NM 32668]

NEW MEXICO

Application

FEBRUARY 1, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 32 N., R. 12 W.,
Sec. 26, S½NW¼.

This pipeline will convey natural gas across 0.064 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc. 78-3746 Filed 2-9-78; 8:45 am]

[4310-84]

[NM 32663]

NEW MEXICO

Application

FEBRUARY 3, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Co. has applied for two 4-inch natural gas pipelines right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 11 W.,
Sec. 1, lots 11, 12, 14, 15 and 16;
Sec. 11, lots 3 and 4;
Sec. 12, lots 4 and 5.

These pipelines will convey natural gas across 1.41 miles of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc. 78-3747 Filed 2-9-78; 8:45 am]

[4310-84]

[NM 32662]

NEW MEXICO

Application

FEBRUARY 3, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Co. has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 23 S., R. 25 E.,
Sec. 15, lot 15;
Sec. 22, NW¼NE¼.

This pipeline will convey natural gas across 0.22 of a mile of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc. 78-3748 Filed 2-9-78; 8:45 am]

[4310-84]

[W-62556]

WYOMING

Application

FEBRUARY 3, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Co., of Oklahoma City, Okla., filed an application for a right-of-way to construct a 4½-inch pipeline and install anodes for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 17 N., R. 93 W.,
Sec. 8, E½SW¼, SW¼SW¼, W¼SE¼ and NE¼SE¼;
Sec. 10, W¼NE¼, NE¼NE¼, E½NW¼ and SW¼NW¼.

The pipeline will extend from the Champlin 226 A-1 Amoco A-1 well located in the NW¼NW¼ of section 11, T. 17 N., R. 93 W., to a point of connection with Colorado Interstate Gas Co.'s existing pipeline in the SW¼SW¼ of section 8, T. 17 N., R. 93 W., Carbon County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc. 78-3749 Filed 2-9-78; 8:45 am]

[4310-84]

[NM 32670, 32671 and 32672]

NEW MEXICO

Applications

FEBRUARY 1, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for three 4-inch natural gas pipeline rights-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 6 W.,
Sec. 23, W¼SE¼;
Sec. 24, lot 1 and NW¼NE¼;
Sec. 25, lot 1.

These pipelines will convey natural gas across 0.433 of a mile of public land in Rio Arriba County, New Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3803 Filed 2-9-78; 8:45 am]

[4310-84]

[INM 32665]

NEW MEXICO

Application

FEBRUARY 1, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 12 W.,
Sec. 12, lots 3 and 4.

This pipeline will convey natural gas across 0.16 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-3804 Filed 2-9-78; 8:45 am]

[4310-84]

OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Bidders

For OCS Lease Sale 43 and 45, consideration is being given by the Departments of the Interior and Energy to the use of a cash bonus bidding system with royalty rates fixed accord-

ing to a predetermined schedule for some of the tracts offered. The schedule would establish in advance a royalty rate applicable during each accounting period dependent upon the value of production during that period. The schedule would apply higher rates to higher values of production and lower rates to lower values of production. The value of production for each accounting period will be adjusted for the rate of general inflation using the implicit price deflator for gross national product. The levied royalty may range from a minimum of 12.5 percent to a maximum level, such as 60 percent, depending on the gross value of production achieved in each accounting period. The royalty rate schedule may specify a different royalty rate for each of several ranges of production value or it may be specified by an equation that gives a unique royalty rate for each level of production value. Different groups of tracts in a lease sale may be governed by different rate schedules.

Bidders will be informed of the decisions to use this system and of the applicable royalty rate schedules in the Notices of Sale or by earlier notice in the FEDERAL REGISTER.

Other applicable regulations and leasing procedures will apply to the submission of bids and the award of leases under this system.

Potential bidders under this system should recognize that the Department of Energy is authorized, under Section 302 (b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal leases.

GEORGE L. TURCOTT,
Acting Director,
Bureau of Land Management.

Approved: February 6, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant
Secretary of the Interior.

JANUARY 26, 1978.

[FR Doc. 78-3790 Filed 2-9-78; 8:45 am]

[4310-55]

Fish and Wildlife Service

DANGERED SPECIES PERMIT

Receipt of Application

Applicant: Alaska Area Director, U.S. Fish and Wildlife Service, Anchorage, Alaska 99501.

The applicant intends to trap, hold temporarily, band, mark, radio tag salvage, extract blood and feather samples, survey and census Aleutian Canada goose (*Branta canadensis leucopareia*). Not more than 25 birds per year will be captured to act as guide birds for migration when released with captive-reared birds for the purpose of

reestablishing the Aleutian Canada goose to its former range. Humane shipment and care has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WFO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1705. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before March 13, 1978. Please refer to the file number when submitting comments.

Dated: February 6, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-3955 Filed 2-9-78; 8:45 am]

[4310-55]

DANGERED SPECIES PERMIT

Receipt of Application

Applicant: David William Belitsky, Scientific Research Area, Department of Natural Resources, Box 5887—Pta. de Tierra, San Juan, Puerto Rico 00906.

The applicant requests a permit to take (kill) up to 20 yellow-shouldered blackbirds (*Agelaius xanthomus*) for food habit studies and capture and band as many as possible.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WFO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1806. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 6, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-3756 Filed 2-9-78; 8:45 am]

[4310-55]

DANGERED SPECIES PERMIT

Receipt of Application

Applicant: Charles Sivelle, 41 West-cliff Drive, Dix Hills, N.Y. 11746.

The applicant requests a permit to import one pair of Cabot's tragopan pheasants (*Tragopan caboti*) from the Pheasant Trust, Norfolk, England for the purpose of enhancement of propagation. Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WFO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1892. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 6, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-3758 Filed 2-9-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Receipt of Application

Applicant: Louisiana Purchase Gardens & Zoo, P.O. Box 123, Monroe, La. 71201.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of mammals and pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WFO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1837. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 6, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-3757 Filed 2-9-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-41]

CERTAIN CERAMIC TILE SETTERS

Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on January 4, 1978, and an amendment thereto was filed on January 20, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Ferro Corp., One Erieview Plaza, Cleveland, Ohio 44115, alleging that unfair methods of competition and unfair acts exist in the importation of certain ceramic tile setters into the United States, or in their sale, by reason of:

- (1) The alleged coverage of such ceramic tile setters by claims 1, 4, 6, 7 and 8 of U.S. Letters Patent 3,169,295;
- (2) The alleged unfair use of complainant's know-how and trade secrets;
- (3) The alleged discriminatory and/or unfairly low pricing with the intent to destroy or injure competition;
- (4) An alleged conspiracy to price discriminatorily and/or unfairly low;
- (5) An alleged attempt and intent to monopolize; and
- (6) An alleged conspiracy to attempt to monopolize.

The amended complaint alleges that the unfair methods of competition and unfair acts listed as 1 to 4 above have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States, and that the unfair methods of competition and unfair acts referred to as 5 and 6 above have the effect or tendency to restrain or monopolize trade and commerce in the United States. Complainant requests permanent exclusion from entry into the United States of the articles in question. Complainant also requests exclusion from entry into the United States, except under bond, of the articles in question during the investigation of this matter.

Having considered the amended complaint, the United States International Trade Commission on February 3, 1978, ordered:

1. That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c) whether, on the basis of the allegations set forth in the complaint and the evidence adduced, there is a violation or reason to believe that there is a violation of subsection (a) of this section in the unauthorized importation of certain ceramic tile setters into the United States, or in their sale, by reason of:

- (a) The alleged coverage of such ceramic tile setters by claims 1, 4, 6, 7 and 8 of U.S. Letters Patent 3,169,295;

(b) The alleged unfair use of complainant's trade secrets and know-how;

(c) The alleged charging of discriminatory and/or unfairly low prices for such ceramic tile setters with the intent to destroy or injure competition;

(d) An alleged conspiracy to charge discriminatory and/or unfairly low prices for such ceramic tile setters;

(e) An alleged attempt and intent to monopolize the United States market for such ceramic tile setters; and

(f) An alleged conspiracy to monopolize the United States market for such ceramic tile setters,

the effect or tendency of which, in the case of (a) to (d) above, is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or the effect or tendency of which, in the case of (e) and (f) above, is to restrain or monopolize trade and commerce in the United States.

2. That, for purpose of the investigation so instituted, the following persons, alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, are hereby named as respondents upon which the amended complaint and this notice are to be served:

DOMESTIC IMPORTER

Dallas Ceramic Tile Co., 7834 Hawyn Freeway, Dallas, Tex. 75217.

FOREIGN MANUFACTURERS

Refractarios Monterrey, S.A., Apdo. Postal 2691, Monterrey, N.L., Mexico.
Ceramica Regiomontana, S.A., Apdo. Postal 1269, Monterrey, N.L., Mexico.

3. That, for the purpose of the investigation so instituted, Judge Myron R. Renick, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby appointed as presiding officer.

4. That, for the purpose of the investigation so instituted, Steven David Moskowitz, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney.

Responses must be submitted by the name respondents in accordance with § 210.21 of the Commission's rules of practice and procedure, as amended (41 FR 17710, April 27, 1976). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the amended complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended

complaint and of this notice, and will authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The amended complaint, with the exception of confidential information referred to therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the New York City office of the Commission, 6 World Trade Center.

Issued: February 7, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-3845 Filed 2-9-78; 8:45 am]

[7020-02]

[332-73]

DRAFT CHAPTERS OF THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

Hearing

AGENCY: United States International Trade Commission.

ACTION: Public hearing, pursuant to Commission investigation No. 332-73, under the authority of section 332(g) of the Tariff Act of 1930, as amended, concerning a draft of, and draft U.S. comments on, the following chapters of the Harmonized Commodity Description and Coding System:

- Chapter 41: Raw hides and skins and leather.
- Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut).
- Chapter 43: Furskins and artificial fur; manufactures thereof.
- Chapter 44: Wood and articles of wood.
- Chapter 45: Cork and articles of cork.
- Chapter 46: Manufactures of straw, of esparto and of other plaiting materials; basketwork and wickerwork.

TIME AND LOCATION: Beginning on March 1, 1978, at 10 a.m., e.d.t., in the Hearing Room of the United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

REQUESTS TO APPEAR: Requests to appear at the hearing must be filed in writing with the Secretary of the Commission not later than February 22, 1978. Parties who have properly entered an appearance by this date will be individually notified of the date on which they are scheduled to appear. Such notice will be sent as

soon as possible after February 27, 1978. Any person who fails to receive such notification by February 27, 1978, should immediately communicate with the Office of the Secretary of the Commission.

WRITTEN SUBMISSIONS: Parties wishing to submit written comments in lieu of attendance at the hearing should do so by March 10, 1978.

COPIES OF DOCUMENTS: Copies of the draft chapters and draft U.S. comments thereon which are the subject of the hearings are available for public inspection at the offices of the Commission, 701 E Street NW., Washington, D.C. 20436, or at 6 World Trade Center, New York, N.Y. 10048. The Commission will also send copies to interested parties who notify the Commission of their interest with respect to any particular chapter or group of chapters.

FOR FURTHER INFORMATION CONTACT:

Eugene A. Rosengarden, Director, Office of Nomenclature, Valuation, and Related Activities, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0370.

SUPPLEMENTARY INFORMATION: The purpose of this hearing is to obtain the comments and views of interested parties with respect to the above mentioned draft chapters of the Harmonized Commodity Description and Coding System, and of the draft U.S. comments thereon.

This notice is being issued pursuant to Commission investigation No. 332-73, instituted on January 31, 1975 (40 FR 6239), under section 332(g) of the Tariff Act of 1930. The investigation was initiated in accordance with section 608(c) of the Trade Act of 1974 which provides, in part, that the Commission shall institute an investigation which would provide the basis for—

(2) Full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices . . .

The Harmonized Commodity Description and Coding System (Harmonized Code) is being developed by the Customs Cooperation Council (CCC), an 80-member intergovernmental organization with headquarters in Brussels, as an international commodity classification system which will be adaptable for modernized customs tariff nomenclature purposes and for recording, handling, and reporting of

transactions in international trade. The Harmonized Code will be based on, and in many respects will be an extension of, the Customs Cooperation Council Nomenclature; formerly known as the Brussels Tariff Nomenclature or BTN.

Currently, a technical team working under the auspices of the CCC prepares drafts of the various chapters of the Harmonized Code for consideration by the Harmonized System Committee which was established in order to develop the code. These drafts are forwarded to the members and observers of the Committee for their review and submission of written comments. The Committee meets three times a year to consider these drafts and the written comments and presentations of the various delegations. The review of a particular chapter or group of chapters may extend to more than one meeting.

In 1971, the Department of the Treasury established an Interagency Advisory Committee on Customs Cooperation Council Matters in order to provide a basis for interested Federal agencies to participate with respect to CCC matters. In order to establish and develop U.S. programs and policies with respect to the Harmonized Code, the interagency committee has instituted procedures which take into account the provisions of section 608(c) of the Trade Act of 1974, which call for the Commission to contribute to the U.S. technical input to the Harmonized System Committee. Under these procedures the Commission is preparing technical comments and proposals on the various chapters of the Harmonized Code for consideration by the interagency committee in the determination of U.S. positions with respect to the Harmonized Code. In making proposals, the Commission is seeking and taking into consideration the views of trade and industry and other interested parties and of interested Government agencies.

The draft U.S. comments on the chapters of the Harmonized Code released for public comment today relate specifically to the technical team drafts of these chapters and should be read in conjunction therewith.

In its public notice issued May 10, 1976, regarding hearings on the chapters of the Harmonized Commodity Description and Coding System (41 FR 19781 of May 13, 1976) interested parties were notified regarding the rules governing the conduct of the hearings, and the submission of written statements. The Commission's notice of May 10, 1976, applies to the hearing on the chapters being released today to the extent that it is applicable.

In its public notices of May 4, 1976 (41 FR 18716 of May 6, 1976), August 9, 1976 (41 FR 34370 of August 13,

1976), December 20, 1976 (41 FR 55948 of December 23, 1976), and September 1, 1977 (42 FR 44852 of September 7, 1977), the Commission identified those chapters which have been considered thus far by the Harmonized System Committee, and the chapters for which a technical team draft has been released. Since those notices were issued the Commission has received the following draft chapters prepared by the technical team:

Chapter 32: Tanning and dyeing extracts; tannins and their derivatives; dyes, colours, paints, and varnishes; putty, fillers, and stoppings; inks.

Chapter 91: Clocks and watches and parts thereof.

Copies of these chapters are also available for inspection as specified above; the Commission will send copies of these chapters to interested parties upon request.

Issued: February 7, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

(FR Doc. 78-3845 Filed 2-9-78; 3:45 am)

[4810-25]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Joint Board Advisory Committee on Actuarial Examinations

ADVISORY COMMITTEE ANNUAL REVIEW

Request for Public Comment

In compliance with the General Services Administration's directive of January 9, 1978, the Office of Management and Budget Circular A-63, Transmittal Memorandum No. 5, and with section 7(b) of the Federal Advisory Committee Act (Pub. L. 92-463), the Joint Board is conducting its annual review of the Joint Board Advisory Committee on Actuarial Examinations ("the Committee"). The Committee's purpose is to assist the Joint Board in fulfilling its responsibility, imposed by 29 U.S.C. 1242(a), to insure that persons enrolled to perform actuarial services with respect to plans to which the Employee Retirement Income Security Act of 1974 applies meet certain standards and qualifications. The specific functions performed by the Committee in this connection are:

1. Recommendation of topics and questions for inclusion on the Joint Board's examinations in actuarial mathematics and methodology.
2. Recommendations regarding the adequacy for enrollment purposes of other actuarial examinations, and
3. Recommendations regarding the demonstration of the education and training required for enrollment by university and college programs in actuarial mathematics.

The Joint Board's annual review of the Committee is set forth in proposed form below. Interested persons may participate in this review process by submitting written data, views, and arguments to the Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220. Comments received by March 13, 1978, will be considered in the process of the Joint Board's review of the Committee.

Dated: February 7, 1978.

ROWLAND E. CROSS,
Chairman, Joint Board for the
Enrollment of Actuaries.

JUSTIFICATION STATEMENT

1. COMMITTEE FUNCTION

The Joint Board for the Enrollment of Actuaries is responsible for the enrollment of individuals who wish to perform actuarial services with respect to plans to which the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, applies. The standards and qualifications for enrollment of those applying on or after January 1, 1976, as set forth in 29 U.S.C. 1242(a)(1), include education and training in actuarial mathematics and methodology as evidenced by:

1. A degree in actuarial mathematics or its equivalent from an accredited college or university,
2. Successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or
3. Successful completion of other actuarial examinations deemed adequate by the Joint Board.

The Committee renders assistance to the Joint Board in the Joint Board's fulfillment of its responsibility to administer examinations in actuarial mathematics and methodology to individuals wishing to demonstrate that they satisfy the standards and qualifications required for enrollment. Specifically, the Committee considers topics and questions appropriately covered by and included in the Joint Board's examinations and will recommend topics and questions for inclusion in future examinations. In addition, the Committee may review other actuarial examinations offered by actuarial organizations and make recommendations regarding the adequacy of such other examinations to demonstrate the education and training required for enrollment. The Committee also reviews university and college programs in actuarial mathematics for the purpose of recommending to the Joint Board curricula which will meet the requirement for enrollment of education and training.

2. NEED FOR CONTINUATION OF THE COMMITTEE

The Joint Board for the Enrollment of Actuaries is comprised of five indi-

viduals, each of whom has other, full-time government positions. In accordance with its bylaws, only three of the Joint Board members are actuaries. Further, staff provided the Joint Board is minimal. While the Director of Practice (Office of the Secretary, Department of the Treasury) serves as the Joint Board's Executive Director, he has no actuarial expertise at his disposal. Finally, from their experience in writing actuarial examinations which were administered to those individuals who applied for enrollment before January 1, 1976, the actuarial members of the Joint Board have determined that their fulfillment of the entire responsibility for the design of examinations entails too great a sacrifice of their other governmental responsibilities. Accordingly, the Joint Board felt the need to employ the technical expertise of an advisory committee of actuaries outside the government to assist it in writing future examinations.

The Joint Board has neither created nor used an advisory committee other than the Committee discussed herein. Consequently, the Committee's efforts do not duplicate the work of another advisory committee within the agency. As far as the Joint Board is aware, it is the only Federal agency responsible for writing actuarial examinations or setting other criteria to determine actuaries' qualifications. Therefore, the Joint Board does not believe that the work of its Committee is duplicated elsewhere in the Federal Government.

In addition, other means to fulfill the responsibilities of the Committee are not feasible. Public hearings are not the kind of forum in which sophisticated tests of actuarial knowledge can be developed and treated. Further, breaches of the security necessary for prospective examination materials are unavoidable in the context of public hearings. The Joint Board considered the possibility of obtaining examination materials from consultants in the educational testing field. However, it determined that consulting firms do not have the expertise to provide examination questions in all highly specialized areas of actuarial education.

In the past year, the Committee has had nine meetings and submitted four reports to the Joint Board. These reports were the Advisory Committee Report on Basic Examinations, the Advisory Committee Report on Pension Examinations, the Advisory Committee Syllabus Report, and the Advisory Committee Report on Adequacy. These reports assisted the Joint Board in deciding which societal examinations would be deemed adequate for purposes of educational requirements as set forth in 20 CFR 901.12. Further, the Committee provided questions for the Joint Board basic examination given September 29, 1977, and for the

Joint Board pension examination, given September 30, 1977. The total operating cost of the Committee for 1977 was \$14,711.00.

Currently, the Committee is in the process of formulating questions for the Joint Board 1978 examinations. The Committee has met once this year, and it is anticipated two or three additional meetings will be needed to complete questions for the 1978 examinations. Costs for the year 1978 are projected to be considerably lower than they were for the year 1977.

3. BALANCED MEMBERSHIP

Section 5(c) of the Federal Advisory Committee Act, Pub. L. 92-463, requires that, to the extent the requirement is applicable, the membership of an advisory committee shall be fairly balanced in terms of the points of view represented and the functions the advisory committee performs. In attempting to insure maximum practicable representation on the Committee of points of view regarding the Joint Board's examinations extant in the community of actuaries, the Joint Board published an invitation to submit applications for Committee membership in the FEDERAL REGISTER and through a news release.

Several considerations affected the Joint Board's judgment in achieving balanced representation. The Committee's purposes are such that it must be comprised, to the extent possible, of persons experienced in actuarial education. In addition, because the Committee works on examinations to be taken by applicants for enrollment, consideration for membership could be given only those already enrolled. It is clearly inappropriate for examination candidates to participate in writing parts of the examination which they intend to take. Those applicants for membership who were considered qualified for enrollment under the regulations governing enrollment before January 1, 1976. The Joint Board believes that the method by which individuals satisfied the education or examination requirement for enrollment as actuaries under those regulations (20 CFR 901.12) will be a significant influence on their perspectives on future Joint Board examinations. That requirement was satisfied in any one of the following ways:

1. Successful completion of an examination in actuarial mathematics and methodology administered by the Joint Board;
2. Certain classes of membership in actuarial organizations attained by proctored examination;
3. A bachelor's or higher degree from an accredited college or university granted after satisfactory completion of a course of study in actuarial science; or a bachelor's or higher degree from an accredited college or university granted after successful completion of a course of study in which the major area of concentration was mathematics, sta-

tistics or computer science, but only if the applicant has also successfully completed courses in life contingencies of a prescribed number of hours given by accredited schools.

Of the eight members of the Committee, one satisfied the education or examination requirement by successful completion of the Joint Board's examination, five by organization membership, and two by bachelor's or higher degrees in actuarial mathematics and methodology. It should be noted that three different actuarial organizations are represented by the five members who qualified for enrollment in that fashion. Further, the work experience of the Committee's members is comprised of employment by consulting firms (4), university (1), insurance companies (2), and manufacturing company (1).

Because the Committee does not consider policy other than that discussed above, the Joint Board is of the view that representation of consumer and other public interest groups on the Committee is not warranted. The possibility of breaches of security with respect to prospective examination materials also underlies this view.

[FR Doc. 78-3809 Filed 2-9-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is

likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All person wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to:

Deputy Assistant Secretary for Employment and Training, 601 D St. NW., Washington, D.C. 20213.

Signed at Washington, D.C., this sixth day of February 1977.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING FEBRUARY 3, 1978

Name of applicant, location of enterprise
and principal product or activity

- Down East Peat Co., Deblois, Maine—Peat
humus mining.
Potomac Eastern Fuels Co., Ronceverts,
W.Va.—Nursing home.
Universal Manufacturers & Rebuilders, Inc.,
Fairmont, W.Va.—Rebuilding and repairing
of coal cars for the coal mines.
Cherry River Cinema, Inc., Richwood,
W.Va.—Movie theatre.
The Julia Ribaud Home, Wayne County,
Pa.—Nursing services.
Rensselaer Care Center, Inc., Rensselaer,
Ind.—Comprehensive nursing care facility.

Polymer Ecology Corp., Royersford, Pa.—Grinding and reprocessing of raw materials.

Liberty Footwear, Inc., Bedford, Pa.—Manufacture of men's shoes.

Meadowdale Coal Corp., Springdale, W. Va.—Coal mining operation.

Charles W. Whitaker, Decatur, Ala.—Motel and restaurant.

J. LaMar Dugan, D.D.S. Athen, Tenn.—Complete professional dental services.

Sartain Associates, Inc., Canton, Miss.—Manufacture of boats—aluminum.

Aufstieg Quelle S.A., Ltd., Barnesville, Ga.—Pizza parlor.

Sir Steak, Ltd., Gulfport, Miss.—Food and drinks services.

Atlantic & Western Financial Corp., Sanford, N.C.—Short line railroad.

Arthur H. Boylan, Jr. & wife, Karen T., Pike County, Ky.—Motel.

Lee Textiles, Inc., Lake City, Tenn.—Manufacture of knit shirts, fabrics, and outerwear coats.

G&W Chrysler-Plymouth, Inc., Tarboro, N.C.—Sales of new and used cars.

Timber Island Seafood, Inc., Carrabelle, Fla.—Processing of shrimp.

Skyline Manufacturing Co., Inc. (Tenant of the Town of Cheraw), Cheraw, S.C.—Manufacture of children's clothing.

Grand Traverse Development Co., Inc., Acme, Mich.—Hotel.

American Fabri-Craft Corp., Delta, Ohio—Manufacture of fabricated iron and steel.

Skyview Supper Club, Presque Isle, Wis.—Supper club and motel.

Donald L. and Joyce N. Levey, Viking Inn, Laverne, Minn.—Motor-hotel.

LCP Plastics, Inc., Carrollton, Ohio—Manufacture of plastic pipes and fittings.

Centennial Co., Cabot, Arkansas Cotton Plant, Arkansas—Manufacture of prefabricated mobile homes.

Rynes Aviation Industries, Inc., Frederick, Okla.—Retail-helicopters.

La Barge Electronics (Tenant of City of Flippin), City of Flippin, Ark.—Manufacture of electronic components, i.e., military intrusion detection devices, cables and circuits for computers, etc.

Navajo Textiles of New Mexico, Inc., Las Vegas, N. Mex.—Manufacture of various parachute models and accessories.

Milton E. Mooney, Olney, Tex.—Motel.

H-L Industries, Inc., Ruidoso, N.Mex.—Dining facility and shopping mall.

Gilmer Hospital, Inc., Gilmer, Tex.—General health care.

Carroll County Newspapers, Inc., Berryville, Ark.—Publishing of newspaper.

Jimmie D. Sybert and Marjorie M. Sybert, Rock Port, Mo.—Room rentals.

Mid-America Tanning Co., Inc., Sergeant Bluff, Iowa—Tanning and finishing of leather.

Dwight A. Harrison, Huerfano County, Colo.—Ski area and supporting facilities.

I.P. & W. Industries, Inc., Lindon, Utah—Manufacture of vessels and pipes.

Wheels Unlimited, Chubbuck, Idaho—Sales of new and used trailers and service.

Marvin Landplane, Woodland, Calif.—Manufacture of agricultural implements and pickup-truck bumpers.

Cascade Airways, Inc., Walla Walla, Wash.—Provision of scheduled airline services.

[FR Doc. 78-3736 Filed 2-9-78; 8:45 am]

[4510-30]

SUBCOMMITTEE ON EQUAL APPRENTICESHIP OPPORTUNITY, FEDERAL COMMITTEE ON APPRENTICESHIP

Rescheduled Meeting

On January 20, 1978, the Notice of Meeting was published in the FEDERAL REGISTER (43 FR 2945) for a meeting of the Subcommittee on Equal Apprenticeship Opportunity, Federal Committee on Apprenticeship, to be held February 23, 1978, at the Americana Hotel, Oceanfront at 9701 Collins Avenue, Miami Beach, Fla.

The meeting has rescheduled for February 27, 1978, at the Hollywood Beach Holiday Inn Resort, 4000 South Ocean Drive, Hollywood, Fla. 33019.

There are no other changes to the notice.

Signed at Washington, D.C., this 6th day of February 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training Administration.

[FR Doc. 78-3836 Filed 2-9-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-2364, 2365, 2366]

FAIRFIELD WORKS, U.S. STEEL CORP., BESSEMER, ALA., BIRMINGHAM, ALA., FAIRFIELD, ALA.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2364, 2365, 2366: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on September 19, 1977, in response to worker petitions received on September 2, 1977 which were filed by the United Steelworkers of America on behalf of workers and former workers involved in the operation of steelmaking at the Fairfield Works of the United States Steel Corp.

It was subsequently determined at a meeting of officials of the United Steelworkers of America, U.S. Steel Corp. and the U.S. Department of Labor that the entire operation at the Fairfield Works could be defined to be: basic steelmaking plus the production of the following products:

1. Structural.
2. Plate.
3. Wire and Wire Products.

4. Cold Rolled Sheet.
5. Coated Sheet and Painted Sheet.
6. Tin Mill Products.
7. Hot Rolled Sheet.
8. Railroad Products.
9. Cotton Bale Ties.
10. Merchant Bars.

Workers engaged in employment related to the production of structurals, plate, wire and wire products at the Fairfield Works have previously been certified as eligible to apply for adjustment assistance as a result of earlier petitions (TA-W-1429, 1451, 1452).

The Notice of Investigation was published in the FEDERAL REGISTER on October 4, 1977 (42 FR 54032). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of U.S. Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. With respect to workers engaged in employment related to the production of one of the products listed below, it is concluded that all of the criteria have been met on or after the impact date as listed for each product:

Product and impact date

Cold Rolled Sheet, August 31, 1976.
Coated Sheet and Painted Sheet, August 31, 1976.
Tin Mill Products, January 1, 1977.
Hot Rolled Sheet, January 1, 1977.

COLD ROLLED SHEET

INCREASED IMPORTS

Imports of cold rolled carbon steel sheet increased from 2,067.1 thousand tons in 1975 to 2,350.7 thousand tons in 1976 and increased from 1,627.1 thousand tons in the first 3 quarters of 1976 to 2,174.7 thousand tons in the first 3 quarters of 1977. The ratio of imports to domestic shipments declined from 16.5 percent in 1975 to 13.2 percent in 1976. The ratio increased from 11.8 percent in the first 3 quarters of 1976 to 16.4 percent in the first 3 quarters of 1977.

CONTRIBUTED IMPORTANTLY

A survey of customers that purchased cold rolled sheet from the Fairfield Works revealed that in 1976 and 1977 several of these customers had reduced their purchases from the Fairfield Works while increasing purchases of imported cold rolled sheet.

COATED SHEET AND PAINTED SHEET

INCREASED IMPORTS

Imports of galvanized steel sheet, a category which includes the coated

sheet and painted sheet manufactured at the Fairfield Works, increased from 739.0 thousand tons in 1975 to 1,471.5 thousand tons in 1976 and increased from 1,076.5 thousand tons in the first 3 quarters of 1976 to 1,319.5 thousand tons in the first 3 quarters of 1977. The ratio of imports to domestic shipments increased from 19.9 percent in 1975 to 28.4 percent in 1976 and increased from 26.6 percent in the first 3 quarters of 1976 to 31.1 percent in the first 3 quarters of 1977.

CONTRIBUTED IMPORTANTLY

A survey of customers that purchased coated and painted sheet from the Fairfield Works revealed that in 1976 and 1977 several of these customers had reduced purchases from the Fairfield Works and increased purchases of imported sheet. Nearly every customer surveyed indicated that imports of these products were available in the U.S. marketplace at prices substantially below the domestic equivalent.

TIN MILL PRODUCTS

INCREASED IMPORTS

Imports of tin plate, a category which includes the tin mill products produced at the Fairfield Works, declined from 407.1 thousand tons in 1975 to 309.3 thousand tons in 1976. Imports increased from 230.1 thousand tons in the first three quarters of 1976 to 360.2 thousand tons in the first three quarters of 1977. The ratio of imports to domestic shipments declined from 9.7 percent in 1975 to 6.4 percent in 1976. The ratio increased from 6.1 percent in the first 3 quarters of 1976 to 9.4 percent in the first three quarters of 1977.

CONTRIBUTED IMPORTANTLY

A survey of customers that purchase tin plate from the Fairfield Works revealed that in 1977 some of these customers had reduced purchases from Fairfield while increasing purchases of imported tin plate. All of the customers indicated there was import influence in the marketing of this product. None of the customers decreased purchases from Fairfield while buying imports in 1976.

HOT ROLLED SHEET

INCREASED IMPORTS

Imports of hot rolled carbon steel sheet increased from 1,509.2 thousand tons in 1975 to 1,635.9 thousand tons in 1976 and increased from 1,071.6 thousand tons in the first 8 months of 1976 to 1,786.8 thousand tons in the first 8 months of 1977. The ratio of imports to domestic shipments declined from 14.0 percent in 1975 to 11.3 percent in 1976. The ratio increased from 9.5 percent in the first 8 months of

1976 to 17.0 percent in the first 8 months of 1977.

CONTRIBUTED IMPORTANTLY

A survey of customers that purchase hot rolled sheet revealed that some of these customers had increased purchases of imported sheet in 1977 while decreasing purchases from the Fairfield Works. None of the customers decreased purchases from Fairfield while buying imports in 1976.

Product and impact date

Cold Rolled Sheet, August 31, 1976.
Coated Sheet and Painted Sheet, August 31, 1976.
Tin Mill Products, January 1, 1977.
Hot Rolled Sheet, January 1, 1977.

In accordance with provisions of the Act, I make the following certifications:

All workers engaged in employment related to the production of cold rolled sheet at the Fairfield Works of U.S. Steel Corp. who became totally or partially separated from employment on or after August 31, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of coated sheet and painted sheet at the Fairfield Works of U.S. Steel Corp. who became totally or partially separated from employment on or after August 31, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of tin mill products at the Fairfield Works of U.S. Steel Corp. who became totally or partially separated from employment on or after January 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of hot rolled sheet at the Fairfield Works of U.S. Steel Corp. who became totally or partially separated from employment on or after January 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

The investigation has further revealed that without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to railroad products:

That increased imports have "contributed importantly" to the separations, or threat thereof, and to the decrease in sales or production of the firm or subdivision.

A survey of customers representing a substantial proportion of sales of rails, tie plates and spikes at the Fairfield Works indicated that none of these customers purchased imports of these products. A survey of customers representing a substantial proportion of sales of axles at the Fairfield Works indicated that only one customer had decreased purchases from the Fairfield Works and increased purchases of imports. This customer bought one

shipment of imported axles in 1976 but none in either 1975 or 1977. One other customer purchased a small quantity of imports but increased purchases from the Fairfield Works. None of the other customers surveyed purchased imports.

The investigation has further revealed that workers engaged in the production of cotton bale ties and merchant bars cannot be found eligible for adjustment assistance under these petitions for the reasons as listed below:

COTTON BALE TIES

Production of cotton bale ties at the Fairfield Works of U.S. Steel was terminated in July 1975. Since the earliest possible date of certification for these petitions is August 31, 1976 and production of cotton bale ties ceased prior to that date, workers engaged in the production of cotton bale ties cannot be covered under the eligibility period for these petitions.

MERCHANT BARS

The merchant mill at the Fairfield Works of U.S. Steel Corp. which was used to produce merchant bars, discontinued commercial operations in 1974. Since the earliest possible date of certification for these petitions is August 31, 1976 and production of merchant bars ceased prior to that date, workers engaged in the production of merchant bars cannot be covered under the eligibility period for these petitions.

Signed at Washington, D.C., this 31st day of January 1978.

HARRY GRUBERT,
Director, Office of
Foreign Economic Research.

[FR Doc. 78-3293 Filed 2-9-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

SUBCOMMITTEE ON ANTHROPOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

NAME: Subcommittee on Anthropology of the Advisory Committee for Behavioral and Neural Sciences.

DATE AND TIME: March 1, 2, 3, 4, 1978; 9 a.m. to 6 p.m. each day.

PLACE: Room 338 National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:

Dr. John Yellen, Program Director, Anthropology Program, Room 320,

National Science Foundation, Washington, D.C. 20550, telephone 202-632-4208.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in Anthropology.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

FEBRUARY 7, 1978.

[FR Doc. 78-3819 Filed 2-9-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON METABOLIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Subcommittee on Metabolic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

DATE AND TIME: February 27 and 28, 1978; 9 a.m. to 5 p.m. each day.

PLACE: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Elijah B. Romanoff, Program Director, Metabolic Biology Program, Room 331, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4312.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in Metabolic Biology.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

FEBRUARY 7, 1978.

[FR Doc. 78-3818 Filed 2-9-78; 8:45 am]

[6820-36]

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

PAST ACCOMPLISHMENTS AND FUTURE PLANS

Annual Review

Pursuant to GSA directives implementing OMB Circular No. A-63, Transmittal Memorandum No. 5, the National Transportation Policy Study Commission is conducting an annual comprehensive review of its past accomplishments and future plans. Consequently, the Commission is soliciting public comment on the importance and scope of the Commission's mandate, its future plans and past achievements. Comments should be sent to Edward R. Hamberger, General Counsel, 1750 K Street NW., Suite 800, Washington, D.C. 20006, and must be received in writing no later than March 3, 1978.

Dated: February 6, 1978.

BUD SHUSTER,
Chairman.

[FR Doc. 78-3753 Filed 2-9-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-591]

EBASCO SERVICES, INC.

Receipt of Standard Safety Analysis Report

Ebasco Services, Inc., in accordance with 10 CFR Part 50, Appendix O, has filed with the Commission a document entitled "Ebasco Standard Safety Analysis Report" (ESSAR), which was docketed February 2, 1978. The ten-

dered application for ESSAR was received on November 23, 1977. Following a preliminary review for completeness, it was accepted on January 25, 1978, for docketing. Docket No. STN 50-591 has been assigned to ESSAR and should be referenced in any correspondence relating thereto.

10 CFR Part 50, Appendix O permits an entire facility design or major portions of it to be identified as a standard design to be used in multiple applications. ESSAR describes and analyzes the balance-of-plant (BOP) of a pressurized water reactor standard nuclear power plant utilizing the standard designs of nuclear steam supply system (NSSS) vendors that have been or are presently being reviewed by the Commission. The standard plant is designed for an initial core power level of 3800 megawatts thermal.

When its review of ESSAR is complete, the Commission's staff will prepare and publish a Safety Evaluation Report documenting the results of the review. In addition, ESSAR will be referred to the Advisory Committee on Reactor Safeguards (ACRS) for its review and a report thereon. The Commission's staff will also prepare and publish a determination as to whether or not the ESSAR design is acceptable, subject to such conditions as may be appropriate. Copies of the Safety Evaluation Report, the ACRS report and the staff's determination will be made available to the public. A notice relating to the availability of these documents will be published in the FEDERAL REGISTER.

All interested persons who desire to submit written comments for consideration by the staff and the ACRS should send them to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by April 11, 1978.

A copy of ESSAR is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. When available, the Safety Evaluation Report, the ACRS report, and the staff's determination will be made available for inspection by the public at the NRC Public Document Room.

Dated at Bethesda, Md., this 3d day of February 1978.

For the Nuclear Regulatory Commission.

HARRY ROOD,
Acting Chief, Light Water Reactors Branch No. 2, Division of Project Management.

[FR Doc. 78-3686 Filed 2-9-78; 8:45 am]

[7590-1]

[Docket No. 50-3361]

NORTHEAST NUCLEAR ENERGY CO. ET AL.**Proposed Issuance of Amendment to Facility Operating License**

The Nuclear regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-65 issued to Northeast Nuclear Energy Co., The Hartford Electric Light Co., Western Massachusetts Electric Co. and Connecticut Light and Power Co. (the licensees) for operation of the Millstone Nuclear Power Station Unit No. 2, located in Waterford, Conn.

The amendment would change the Technical Specifications to authorize operation of Millstone Unit No. 2 with resolution of Control Element Assembly Guide Tube Wear and Steam Generator tube support plate cracking problems.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations.

By March 13, 1978 the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Conn. 06103, attorney for the licensees.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts

on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the Combustion Engineering submittal regarding CEA Guide Tube Wear dated January 17, 1978; Northeast Nuclear Energy Co., submittal regarding steam generator support plate cracking dated January 11, 1978; and Northeast Nuclear Energy Co. submittal regarding CEA Guide Tube Wear dated January 25, 1978, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. 06385. The license amendment and the Safety Evaluation, when issued, may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated in Bethesda, Md., this 6th day of February 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors
Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-3855 Filed 2-9-78; 8:45 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY**INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL****Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology

Policy announces the following meeting:

NAME: Intergovernmental Science, Engineering, and Technology Advisory Panel; Natural Resources and Environment Task Force.

DATE: March 1, 1978—1 to 5 p.m.; March 2, 1978—9 to 4 p.m.

PLACE: New Executive Office Building, 726 Jackson Place NW., Room 3104, Washington, D.C.

TYPE OF MEETING: Open.

CONTACT PERSON:

Mr. Louis H. Blair, Office of Science & Technology Policy, Executive Office of the President; telephone 202-395-4596. Anyone who plans to attend should contact Mr. Blair by February 27.

PURPOSE OF THE PANEL: The Intergovernmental Science, Engineering, and Technology Advisory Panel was established on November 4, 1976. The Panel is to identify State, regional and local government problems which research and technology may assist in resolving or ameliorating and to help develop policies to transfer research and development findings.

MINUTES OF THE MEETING: Executive minutes of the meeting will be available from Mr. Blair.

TENTATIVE AGENDA

1. Overview of Research Activities in U.S. Environmental Protection Agency (EPA) Related to State and Local Governments.

2. Detailed Briefings on Federal Research and Research Utilization Activities on:

a. Remote Sensing (briefings from U.S. Department of the Interior, National Aeronautics & Space Administration and EPA).

b. Land Applications of Waste Water.

c. Handling and Disposal of Solid Wastes Including Toxic Wastes.

3. Discussion of Future Task Force activities.

WILLIAM J. MONTGOMERY,
Executive Officer, Office of Science and Technology Policy.

FEBRUARY 6, 1978.

[FR Doc. 78-3802 Filed 2-9-78; 8:45 am]

[7555-02]

WORKING GROUP ON BASIC RESEARCH IN THE DEPARTMENT OF ENERGY**Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Working Group on Basic Research in the Department of Energy.

DATE: February 26, 27, 28, 1978.

TIME: 9 a.m. to 4 p.m.

PLACE: Room 3104, New Executive Office Building, Washington, D.C.

TYPE OF MEETING: Open.

CONTACT PERSON:

Mr. William J. Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, telephone 202-395-4692.

SUMMARY MINUTES: May be obtained from the Office of Science and Technology Policy, Washington, D.C. 20500.

PURPOSE OF ADVISORY COMMITTEE: The Office of Science and Technology Policy is conducting a study which will lead to the formulation of policy governing the performance of basic research by or for the mission agencies. Under the guidance of the Steering Committee on Basic Research in Mission Agencies, the Working Group on Basic Research in the DOE is to examine the policies and procedures and research programs of that agency for adequacy and balance between near-term and long-term technical objectives.

AGENDA: 9 a.m. to 4 p.m. Meetings will be used to discuss reports from subgroup chairmen and to draft preliminary portions of the final report. There also will be some briefings by Government officials.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc. 78-3801 Filed 2-9-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

ADVISORY COUNCILS

Establishment

In accordance with Pub. L. 92-463 committees for the following ten Regional Advisory Councils have been established for two years and will expire on February 1, 1980, unless renewed or dissolved before that date:

- Region I—Advisory Council.
- Region II—Advisory Council.
- Region III—Advisory Council.
- Region IV—Advisory Council.
- Region V—Advisory Council.
- Region VI—Advisory Council.
- Region VII—Advisory Council.
- Region VIII—Advisory Council.
- Region IX—Advisory Council.
- Region X—Advisory Council.

The above ten Regional Councils supersede the original 63 District Advisory Councils.

The geographical areas covered by each of the ten Regional Councils are as follows:

- Region I—Boston, Augusta, Concord, Hartford, Montpelier, and Providence.
- Region II—New York, Hato Rey, Newark, and Syracuse.
- Region III—Philadelphia, Clarksburg, Pittsburgh, Richmond, Baltimore, and Washington, D.C.
- Region IV—Atlanta, Charlotte, Columbia, Miami, Jacksonville, Louisville, Jackson, and Nashville.
- Region V—Chicago, Cleveland, Columbus, Detroit, Indianapolis, Madison, and Minneapolis.
- Region VI—Dallas, Albuquerque, Houston, Little Rock, Lower Rio Grande Valley, Lubbock, New Orleans, Oklahoma City, and San Antonio.
- Region VII—Kansas City, Des Moines, Omaha, St. Louis, and Wichita.
- Region VIII—Denver, Casper, Fargo, Helena, Salt Lake City, and Sioux Falls.
- Region IX—San Francisco, Honolulu, Las Vegas, Los Angeles, Phoenix, and San Diego.
- Region X—Seattle, Spokane, Anchorage, Boise, and Portland.

For further information or any comments, write or call K. Drew, Deputy Advocate for Advisory Councils, 1441 L Street NW., Washington, D.C. 20416, 202-653-6748.

Dated: January 27, 1978.

K. DREW,
Deputy Advocate for
Advisory Councils.

[FR Doc. 78-3777 Filed 2-9-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1425]

KANSAS

Declaration of Disaster Loan Area

The 400 Block of South Oak Street and the 100 Block of West 4th Street in the city of Garnett, in Anderson County, Kans., constitute a disaster area because of damage resulting from a fire which occurred on January 2, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 3, 1978, and for economic injury until the close of business on November 1, 1978, at:

Small Business Administration, District Office, 12 Grand Building—5th Floor, 1150 Grand Avenue, Kansas City, Mo. 64106,

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 1, 1978.

PATRICIA M. CLOHERTY,
Deputy Administrator.

[FR Doc. 78-3778 Filed 2-9-78; 8:45 am]

[8025-01]

[License No. 08/08-00381]

MERCHANTS FINANCE CO., INC.

Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Merchants Finance Co., Inc. (MFCI), 1700 South 1800 West, Salt Lake City, Utah 84107, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR § 107.1004 (1977)), for an exemption from the provisions of the conflict of interest regulation.

The exemption, if granted, will permit MFCI to loan \$100,000 (at 10 percent interest for 10 years) to Miller's Supermarket, Inc. (Millers, Inc.), 702 South Main Street, Moab, Utah 84532. Mr. Ralph J. Miller, Jr., is President and General Manager of Millers, Inc.

Approximately \$10,000 to \$12,000 of the borrowed funds would be used by Miller's, Inc., to purchase equipment from Merchants, Inc., the parent of the Licensee, MFCI.

Pursuant to Paragraph (b) of the definition of "Associate of a Licensee" in § 107.3 of the Regulations, Merchants, Inc., is considered to be an associate of MFCI. As such, the transaction will require an exemption pursuant to § 107.1004(b)(5) of the Regulations.

Notice is hereby given that any person may, no later than February 27, 1978, submit to the Small Business Administration (SBA), in writing, relevant comments on the proposed transaction. Any such communications should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Salt Lake City and Moab, Utah.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator
for Investment.

[FR Doc. 7-3781 Filed 2-9-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1406; Amdt. No. 1]

NEW JERSEY

Declaration of Disaster Loan Area

The above numbered Declaration (See 42 FR 61347), is amended by ex-

tending the date for physical damage until the close of business on February 24, 1978, and for economic injury until the close of business on September 22, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 2, 1978.

RICHARD HERNANDEZ,
Acting Administrator.

[FR Doc. 78-3779 Filed 2-9-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 14291]

WEST VIRGINIA

Declaration of Disaster Loan Area

Boone, Braxton, Gilmer, Harrison, Kanawha, Lewis, Logan, McDowell, and Mingo Counties and adjacent counties within the State of West Virginia constitute a disaster area as a result of damage caused by flooding which occurred on January 25-28, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 6, 1978 at:

Small Business Administration, District Office, 109 North Third Street, Clarksburg, W. Va. 26301,

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 2, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-3780 Filed 2-9-78; 8:45 am]

[4710-01]

[Public Notice 591]

DEPARTMENT OF STATE

Bureau of Consular Affairs

EXCHANGE-VISITOR SKILLS LIST

Amendment to Exchange-Visitor Skills List. Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (Referred to as the Exchange-Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange-visitor visa and/or became a participant in an Exchange-Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year foreign residence (home-country physical presence) requirement of section 212(e) of

said Immigration and Nationality Act as provided by said section and 22 CFR 41.65(b).

1. Part I is amended by making the following changes:

1. Field 2A is changed to read "2A. General Practice of Medicine (including osteopaths who also practice medicine)."

2. Field 2H is changed to read "2H. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)."

3. Field 2I is changed to read "2I. All Therapies, Prosthetics, and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic, and Optometry)."

4. Field 3A is changed to read "3A. Journalism (including, but not limited to, editors and reporters; and including text-book writers, interpreters, and translators)."

5. Field 5A is changed to read "5A. Industrial and Business Administration and Management (including, but not limited to, programmers), and Project Evaluation."

Amended Part I is given below in its entirety:

EXCHANGE-VISITORS SKILLS LIST

PART I—GENERAL LIST OF DESIGNATED FIELDS OF SPECIALIZED KNOWLEDGE OR SKILL

Group (1) Fields in the Administration of Public or Public-Oriented Affairs:

1A. Public Administration (including but not limited to: City Planning and Rural Development).

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning, and Public Health).

1C. Primary School Administration.

1D. Secondary School Administration.

1E. Technical or Vocational School Administration.

1F. Hospital Administration.

1G. Labor Union Administration.

Group (2) Fields in the Social Arts and Professions:

2A. General Practice of Medicine (including osteopaths who also practice medicine). (Amended)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Dermatology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Physical Medicine and Rehabilitation, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Surgery, Thoracic Surgery, and Urology).

2C. Nursing (including, but not limited to: Registered nurses, practical nurses, physician's receptionists, (and medical records clerks).

2D. Medical Technology.

2E. Dentistry.

2F. Dental Technology.

2G. Optometry.

2H. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine). (Amended)

2I. All Therapies, Prosthetics, and Healing (except Medicine, Osteopathy, or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry). (Amended)

2J. Sociology (except Economics, and, including Criminology).

2K. Psychology.

2L. Law (including Judicature).

2M. Religion (including, but not limited to, Ministry).

2N. Primary School Teaching (including, but not limited to: Kindergartens, Nursery Schools).

2O. Secondary School Teaching (including, but not limited to Remedial Teaching, and, Teaching of English as a Foreign Language).

2P. Vocational and Technical School Teaching.

2Q. College and University Teaching in Natural Sciences, Mathematics, Engineering, and Technology (except Agriculture).

2R. Agricultural School Teaching.

2S. College and University Teaching of Education.

2T. College and University Teaching of Social Sciences, Liberal Arts and Literature.

2U. Teaching in Medical Schools (including, but not limited to, lecturers).

2V. Teaching in Law Schools (including, but not limited to, lecturers).

Group (3) Fields in Communication, Transport, and Construction Professions and Skills:

3A. Journalism (including, but not limited to, editors and reporters; and including text-book writers, interpreters, and translators). (Amended)

3B. Electrical Communication Technology.

3C. Radio Operation.

3D. Airplane Piloting.

3E. Architecture (including Marine Architecture).

3F. Construction (including, but not limited to, builders, but not including skilled and unskilled laborers).

3G. Drafting.

3H. Skilled Operation of Construction Machines.

Group (4) Fields in Scientific Professions and Skills:

4A. Chemistry (including chemical engineers and all branches and specialties in Chemistry, but except in Pharmacy).

4B. Life Sciences (including, but not limited to Pharmacy and Biology).

4C. Physics (including physical chemists, metallurgists, and all branches and specialties in Physics).

4D. Mathematics.

4E. Laboratory Technology (including, but not limited to, physical and chemistry laboratory technicians).

4F. Metal Fabrication (including, but not limited to skilled metal craftsmen).

4G. Mining and Lumbering Engineering and Technology.

4H. Marine and Aeronautical Engineering and Technology (including, but not limited to, marine and flight engineers).

4I. Civil Engineering (including Airport Engineering).

4J. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and, including Automatic Data Processing).

4K. Electrical Engineering.

4L. Electronic Engineering (including Radio Engineering).

4M. Repair and Maintenance Technology.

4N. Agriculture and Agronomy (including veterinarians and plant pathologists).

4O. Forestry.

- 4P. Fisheries (or other marine products).
- 4Q. Geology (including all branches and specialties, e.g., Oceanology and all branches of Applied Geology, and, including geophysicists and geochemists).
- 4R. Hydrology (including, but not limited to, Water Pollution).
- 4S. Desalinization.
- 4T. Surveying (including Oceanography).

Group (5) Fields in Business:

- 5A. Industrial and Business Administration and Management (including, but not limited to, programmers), and Project Evaluation. (Amended)
- 5B. Economics.
- 5C. Statistics.
- 5D. Insurance (including actuaries).
- 5E. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions).
- 5F. Banking.

Group (6) Field of Library Science:

- 6A. Library Science (including, but not limited to, Electric Data Storage and Retrieval).

2. Part II, the following amendments concern only changes in the names or order of countries.

1. Under United Arab Emirates, correct the spelling of "Ajman."
2. Change "Dahomey" to read "Benin" and insert identical listing in proper alphabetical order.
3. Change "Central African Republic" to read "Central African Empire."
4. Change "Khmer Republic" to "Cambodia" and insert identical listing in proper alphabetical order.
5. Change "Ceylon" to "Sri Lanka" and insert identical listing in proper alphabetical order.
6. Insert "Lebanon" at the beginning of the listing for that country. The listing, which falls between those for Laos and Liberia, was mistakenly not identified in the original list.

3. Part II, the following amendments involve substantive changes:

1. Cancel the entire listing for South Africa.
2. Cancel the entire listing of Switzerland.
3. Correct Field 2V. for Malawi to read "2V. Teaching in Law Schools" instead of "2V. Teaching in Medical Schools."
4. Add the following new listing for Bahamas in proper alphabetical order:

BAHAMAS

GROUP 1

- 1A. Public Administration.
- 1B. Public Social Administration.
- 1E. Technical or Vocational School Administration.
- 1G. Labor Union Administration.

GROUP 2

- 2J. Sociology.
- 2K. Psychology.
- 2N. Primary School Teaching.
- 2O. Secondary School Teaching.
- 2P. Vocational and Technical School Teaching.
- 2Q. College and University Teaching in Natural Sciences, Mathematics, Engineering, and Technology (except Agriculture).
- 2R. Agricultural School Teaching.
- 2S. College and University Teaching of Education.

- 2T. College and University Teaching of Social Sciences, Liberal Arts and Literature.
- 2U. Teaching in Medical Schools.
- 2V. Teaching in Law Schools.

GROUP 3

- 3A. Journalism.
- 3B. Electrical Communication Technology.
- 3D. Airplane piloting.
- 3E. Architecture.
- 3F. Construction.

GROUP 4

- 4A. Chemistry.
- 4B. Life Sciences.
- 4C. Physics.
- 4D. Mathematics.
- 4H. Marine and Aeronautical Engineering.
- 4I. Civil Engineering.
- 4J. Mechanical Engineering.
- 4L. Electronic Engineering.
- 4N. Agriculture and Agronomy.
- 4P. Fisheries.
- 4Q. Geology.
- 4R. Hydrology.
- 4S. Desalinization.

GROUP 5

- 5A. Industrial and Business Administration and Management, and Project Evaluation.
- 5B. Economics.
- 5C. Statistics.
- 5E. Administration of Financial Institutions.
- 5F. Banking.

GROUP 6

- 6A. Library Science.

5. Add the following new listing for Haiti in proper alphabetical order:

HAITI

All Fields in all 6 groups listed in Part I.

6. Add the following new listing for Papua New Guinea in proper alphabetical order:

PAPUA NEW GUINEA

GROUP 1

- 1A. Public Administration.

GROUP 2

- 2B. Recognized Medical Specialization.
- 2C. Nursing.
- 2D. Medical Technology.
- 2E. Dentistry.
- 2F. Dental Technology.

GROUP 3

- 3C. Radio Operation.
- 3D. Airplane Piloting.
- 3G. Drafting.

GROUP 4

- 4A. Chemistry.
- 4B. Life Sciences.
- 4E. Laboratory Technology.
- 4I. Civil Engineering.
- 4K. Electrical Engineering.
- 4L. Electronic Engineering.
- 4N. Agriculture and Agronomy.
- 4O. Forestry.
- 4T. Surveying.

GROUP 5

- 5A. Industrial and Business Administration and Management and Project Evaluation.
 - 5C. Statistics.
7. Add the following new listing for Western Samoa in proper alphabetical order:

WESTERN SAMOA

All Fields in all 6 groups listed in Part I.

8. Add the following new listing for Yemen Arab Republic in proper alphabetical order:

YEMEN ARAB REPUBLIC

GROUP 1

All Fields listed in Part I.

GROUP 2

- 2A. General Practice of Medicine.
- 2B. Recognized Medical Specializations.
- 2C. Nursing.
- 2D. Medical Technology.
- 2E. Dentistry.
- 2F. Dental Technology.
- 2G. Optometry.
- 2H. Chiropractic and Osteopathy.
- 2I. All Therapies, Prosthetics, and Healing.
- 2J. Sociology.
- 2K. Psychology.
- 2L. Law.
- 2N. Primary School Teaching.
- 2O. Secondary School Teaching.
- 2P. Vocational and Technical School Teaching.
- 2Q. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology.
- 2R. Agricultural School Teaching.
- 2S. College and University Teaching of Education.
- 2T. College and University Teaching of Social Science, Liberal Arts and Literature.
- 2U. Teaching in Medical Schools.
- 2V. Teaching in Law Schools.

GROUP 3

- 3B. Electrical Communication Technology.
- 3C. Radio Operation.
- 3D. Airplane Piloting.
- 3E. Architecture.
- 3F. Construction.
- 3G. Drafting.
- 3H. Skilled Operation of Construction Machines.

GROUP 4

- 4A. Chemistry.
- 4B. Life Sciences.
- 4C. Physics.
- 4D. Mathematics.
- 4E. Laboratory Technology.
- 4F. Metal Fabrication.
- 4G. Mining and Lumbering Engineering and Technology.
- 4H. Marine and Aeronautical Engineering and Technology.
- 4I. Civil Engineering.
- 4J. Mechanical Engineering.
- 4K. Electrical Engineering.
- 4L. Electronic Engineering.
- 4M. Repair and Maintenance Technology.
- 4N. Agriculture and Agronomy.
- 4P. Fisheries.
- 4Q. Geology.
- 4R. Hydrology.
- 4S. Desalinization.
- 4T. Surveying.

GROUP (5)

All Fields listed in Part I.

GROUP (6)

- 6A. Library Science.
9. The listing for the Philippines is amended by adding Groups (1), (5) and (6) and amending Groups (2), (3) and (4). Following is the entire amended listing for the Philippines:

PHILIPPINES

GROUP (1) (ENTIRE GROUP ADDED)

- 1A. Public Administration.
- 1B. Public Social Administration.
- 1D. Secondary School Administration.
- 1E. Technical or Vocational School Administration.
- 1F. Hospital Administration.
- 1G. Labor Union Administration.

GROUP (2)

- 2A. General Practice of Medicine.
- 2B. Recognized Medical Specializations. (Amended)
- 2C. Nursing, including only registered nurses in a recognized nursing specialty.
- 2G. Optometry. (Added)
- 2J. Sociology. (Added)
- 2K. Psychology. (Added)
- 2P. Vocational and Technical School Teaching.
- 2Q. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (including teachers of anthropology and psychology). (Amended)
- 2R. Agricultural School Teaching.
- 2T. College and University Teaching of Social Sciences, Liberal Arts and Literature (particularly, teachers of sociology and economics). (Added)
- 2U. Teaching in Medical Schools.

GROUP (3)

- 3B. Electrical Communication Technology. (Added)
- 3D. Airplane Piloting.
- 3E. Architecture. (Added)
- 3H. Skilled Operation of Construction Machines. (Added)

GROUP (4)

All Fields listed in Part 1. (Fields 4A, 4B, 4C, 4D, 4E, 4F, 4N, 4O, and 4P added.)

GROUP (5) (ENTIRE GROUP ADDED)

All Fields listed in Part 1.

GROUP (6)

- 6A. Library Science. (Added)

The changes made in the Exchange-Visitor Skills list by this Public Notice shall be applied to any alien who obtains an exchange-visitor visa and/or becomes a participant in an Exchange-Visitor program on or after March 15, 1978.

This Notice amends Public Notice No. 356-37 FR 8099-8177, April 25, 1972.

Dated: January 27, 1978.

BARBARA M. WATSON,
Assistant Secretary for
Consular Affairs.

[FR Doc. 78-3805 Filed 2-8-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Edu-

cational Allowances that on March 2, 1978, at 10 a.m., the San Diego Regional Office Station Committee on Educational Allowances shall at Room 902, 2022 Camino del Rio North, San Diego, Calif. 92108 conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in North Park Beauty College, 4071 30th Street, San Diego, Calif. 92104 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: January 31, 1978.

HERBERT R. RAINWATER,
Director, VA Regional Office,
2022 Camino del Rio North
San Diego, Calif. 92108.

[FR Doc. 78-3750 Filed 2-9-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

Office of Hearings

ASSIGNMENT OF HEARINGS

[Notice No. 586]

FEBRUARY 7, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MCC 9650, Carolina Coach Co., et al. v. Roy L. Rouse Transportation Co., now assigned March 7, 1978, at Washington, D.C., is canceled and transferred to modified procedure.

MC 117851 (Sub-No. 23), John Cheeseman Trucking, Inc., now assigned February 15, 1978, at Washington, D.C., is canceled.

MC 141966 (Sub-No. 1), Gina Marie Express Co., Inc., now assigned March 7, 1978, at Chicago, Ill., will be held in Room 3855A, 230 South Dearborn Street.

MC 121509 (Sub-No. 4), Daufeldt Transport, Inc., now assigned March 8, 1978, at Chicago, Ill., will be held in Room 3855A, 230 South Dearborn Street.

MC 138627 (Sub-No. 21), Smithway Motor Express, Inc., now assigned March 10, 1978, at Chicago, Ill., will be held in Room 3855A, 230 South Dearborn Street.

MCF 13251, Chief Truck Lines, Inc.—Purchase—Murphy Transportation, Inc.,

Charles Johnson Trustee in Bankruptcy and MC 43963 (Sub-No. 11), Chief Truck Lines, Inc., now assigned March 15, 1978, at Chicago, Ill., will be held in Room 3855A, 230 South Dearborn Street.

MC 82492 (Sub-No. 157), Michigan & Nebraska Transit Co., Inc., and MC 113434 (Sub-No. 83), Gra-Bell Truck Line, Inc., now assigned March 13, 1978, at Chicago, Ill., will be held in Room 3855A, 230 South Dearborn Street.

MC 118431 (Sub-No. 26), Denver Southwest Express, Inc., and MC 126844 (Sub-No. 40), R.D.S. Trucking Co., Inc., now assigned March 9, 1978, at Chicago, Ill., will be held in Room 3855A, 230 South Dearborn Street.

MC 111871 (Sub-No. 10), Southeastern Freight Lines, is assigned for continued hearing on March 20, 1978 (3 days), at Charlotte, N.C., and will be held at the Holiday Inn, Sugar Creek Road and Interstate 85 North.

MCC 9855, Presley Tours, Inc. v. National Mehl Tours, Inc., et al., now being assigned March 20, 1978 (1 day), at Chicago, Ill., in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-3822 Filed 2-9-78; 8:45 am]

[7035-01]

[Finance Docket No. 28674]

KNAPPTON TOWBOAT CO.—CONTROL—BRUSCO TOWBOAT CO. AND ROLAND E. BRUSCO AND MICHAEL E. BRUSCO, INDIVIDUALS

Knappton Towboat Co. (Transfer-ee), 110 Southeast Caruthers, Portland, Ore. 97214, represented by Alex L. Parks, of White, Sutherland, Parks & Allen, 1200 Jackson Tower, Portland, Ore. 97205, and Donald Macleay, Lynch, Bernhard & Gree, 1625 K Street NW., Washington, D.C. 20006, hereby give notice that on the 31st day of January 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under section 5(2) of the Interstate Commerce Act for an order approving and authorizing Knappton Towboat Co. to acquire, by stock exchange and purchase all of the outstanding stock of Brusco Towboat Co. (Transferor) and Roland E. Brusco, and individual (Transferor) and Michael E. Brusco, an individual (Transferor) and upon Commission approval, to thereafter merge the properties of Brusco Towboat Co. into Knappton Towboat Co. by statutory merger, which application is assigned Finance Docket No. 28674.

The operating authority of the acquiring carrier (Knappton Towboat Co.) pursuant to authority granted in Docket No. W-420 currently embraces operations by towing vessels in the performance of general towage of commodities generally between ports and points in Oregon and Washington along the Columbia River and its tri-

butaries from the mouth of the Columbia River to and including Alderdale, Wash., and by non-self-propelled vessels with the use of separate towing vessels in the transportation of commodities generally between ports and points in Oregon and Washington along the Columbia River and its tributaries from the mouth of the Columbia River to and including Celilo, Oreg.

The operating authority of the carrier being merged (Brusco Towboat Co.) pursuant to a certificate issued in Docket No. W-71 is embraced within the foregoing operating authority of the acquiring carrier, Knappton Towboat Co. If the transaction is consummated, any duplications with respect to the respective operating rights of the two carrier corporations will be eliminated.

No application for temporary authority has been filed under section 311(b).

In the opinion of the applicant, the granting of the authority sought will

not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), Implementation—National Environmental Policy Act, 1969, 352 ICC 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See Implementation—National Environmental Policy Act, 1969, *supra*, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28674 and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce

Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-3823 Filed 2-9-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 91-409), 5 U.S.C. 552b(e)(3).

CONTENTS

Federal Communications Commission	1, 2
Federal Election Commission	3, 4
Federal Energy Regulatory Commission	5, 6
Federal Reserve System	7
National Railroad Passenger Corporation	8
National Transportation Safety Board	9
Postal Service	10

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 2:30 p.m., Thursday, February 2, 1978.

PLACE: Room 847, 1919 M Street NW., Washington, D.C.

STATUS: Emergency open meeting.

MATTER TO BE CONSIDERED: Complaint by the Labor Party against television station WNET, Newark, N.J.

The prompt and orderly conduct of Commission business did not permit announcement prior to this meeting.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone 202-632-7260.

Issued: February 3, 1978.

[S-313-78 Filed 2-8-78; 8:56 pm]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, February 8, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following agenda items should be deleted:

Agenda, Item No., and Subject

General-1-Amendment of Parts 2, 13, 81, and 83 of the Commission's Rules relating to the use of radiotelegraphy in the maritime services (Docket No. 20813).

Common Carrier-6-Modification of procedures in Docket No. 20814, investigation into A.T. & T.'s Multi-Schedule Private Line (MPL) tariff.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone 202-632-7260.

Issued: February 6, 1978, February 7, 1978.

[S-312-78 Filed 2-8-78; 8:56 am]

[6715-01]

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, February 15, 1978 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audits, Compliance, Personnel.

DATE AND TIME: Thursday, February 16, 1978 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions closed.

MATTERS TO BE CONSIDERED:

Portions open to the public:

- I. Future meetings.
- II. Correction and approval of minutes.
- III. Advisory opinions: 1977-57, 1977-61, 1978-3.
- IV. FOIA regulations.
- V. Procedures on nonfilers: Part I.
- VI. FEC clearinghouse fiscal year 1978 research program.
- VII. Appropriations and budget.
- VIII. Classification actions.
- IX. Pending legislation.
- X. Pending litigation.
- XI. Liaison with other Federal agencies.
- XII. Routine administrative matters.

ALSO: Any items from the open meeting of February 9, 1978 which may be carried over.

Portions closed to the public:

Any items continued from the executive session of February 15, 1978.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-321-78 Filed 2-8-78; 3:39 pm]

[6715-01]

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO. S-100-78-624.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 9, 1978 at 2 p.m.

CHANGE IN MEETING: The meeting will start at 10 a.m. due to the change in time and date for the Commission to testify before the House Appropriations Committee.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-320-78 Filed 2-8-78; 2:38 pm]

[6740-02]

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 4649, February 3, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. February 8, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

CP-5(A)-CP77-591, Southern Natural Gas Co.
CP-5(B)-CI77-783 and CI77-784, Kerr-McGee Corp.

KENNETH F. PLUMB,
Secretary.

[S-315-78 Filed 2-8-78; 9:11 am]

[6740-02]

FEDERAL ENERGY REGULATORY COMMISSION.

DATE: February 7, 1978.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: February 15, 1978.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items in the agenda, however, all public documents may be examined in the Office of Public Information, Room 1000.

POWER AGENDA—53D MEETING, FEBRUARY 15, 1978, REGULAR MEETING (10 A.M.)

I. ELECTRIC RATE MATTERS

ER-1. Docket Nos. ER78-70 and ER78-71, Pennsylvania Power & Light Co.:

CAP-1. Docket No. ER78-177, Northern States Power Co. of Minnesota.

CAP-2. Docket Nos. ER78-84, ER78-85, and ER78-86, Southern California Edison Co., Arizona Public Service Co., Nevada Power Co., and Tucson Gas & Electric Co.

CAP-3. Project No. 2146, Alabama Power Co.

CAP-4. Lands withdrawn in projects Nos. 373, 521, 937, 1024, 1415, 1546, 1547, and 1825.

CAP-5. Lands withdrawn in project No. 941—Colorado.

CAP-6. Lands withdrawn in project No. 907—Colorado.

CAP-7. Lands withdrawn in project No. 1144—Alaska.

CAP-8. Lands withdrawn in project Nos. 385, 445, 506, 519, 1220, 1296, 1418, 1519, 1576, 1615, 1616, 1618, 1678, 1682, and 1750—Colorado.

CAP-9. Docket No. DA-117—Alaska, Bureau of Land Management.

CAP-10. State Director, Bureau of Land Management, Denver, Colo. Applications (C-099597, C-22081).

CAP-11. State Director, Bureau of Land Management, Denver, Colo. Application (C-25932).

CAP-12. Docket No. ID-1734, John R. Burton.

GAS AGENDA—53D MEETING, FEBRUARY 15, 1978, REGULAR MEETING

I. PIPELINE RATE MATTERS

A. Pipeline rates:

RP-1. Docket No. RP77-56, Northern Natural Gas Co.

RP-2. Docket No. RP78-25 (DCA78-1), Transcontinental Gas Pipe Line Corp.

RP-3. Docket Nos. RP78-19 and RP-78-20, Columbia Gulf Transmission Co. and Columbia Gas Transmission Corp.

II. PRODUCER MATTERS

A. Producer Certificates:

CI-1. Docket No. CI77-298, Tenneco, Inc.

CI-2. Docket No. CI77-718, South Louisiana Production Co., Inc. (operator), et al.

CI-3. Docket No. CI77-721, Harkins & Co. (operator, et al.). Docket No. CI77-724, C. & K. Petroleum, Inc., et al. Docket No. CI77-758, Amerada Hess Corp.

CI-4. Reserved.

CI-5. Reserved.

CI-6. Reserved.

B. Producer Rates:

CI-7. Docket Nos. CI76-633 and CI76-644, Tenneco Exploration, Ltd. Docket No. CI76-678, Tenneco Oil Co. Docket Nos. CI76-722 and CI76-784, Texaco, Inc.

CI-8. Docket No. RI77-136, Chevron U.S.A., Inc.

CI-9. Reserved.

CI-10. Reserved.

CI-11. Reserved.

C. Special relief:

CI-12. Docket No. RI77-123, Dorfman Production Co., operator.

II. PIPELINE CERTIFICATE MATTERS

A. Pipeline certificates:

CP-1. Docket No. CP76-118, U-T Offshore system.

CP-2. Docket Nos. CP77-597 and CP77-651, Trunkline Gas Co.

CP-3.

(A) Docket No. CP77-363, Columbia Gas Transmission Corp. and National Fuel Gas Supply Corp.

(B) Docket No. CP77-38, Tennessee Gas Pipeline Co., a division of Tenneco Inc. and National Fuel Gas Supply Corp.

(C) Docket No. CI76-432, Cabot Corp., Docket No. CP76-19, Columbia Gas Transmission Corp., and the Sylvania Corp., Docket No. CP76-361, Columbia Gas Transmission Corp.

(D) Docket No. CP77-477, Panhandle Eastern Pipe Line Co.

CP-4. Docket No. CP77-383 (Phase I), Panhandle Eastern Pipe Line Co., Docket No. CP77-423 (Phase I), Colorado Interstate Gas Co.

CP-5. Reserved.

CP-6. Reserved.

CP-7. Reserved.

B. Pipeline physical connection:

CP-8. Docket No. CP77-607, city of Maricopa, Tex., applicant; Natural Gas Pipeline Co. of America, respondent.

CP-9. Reserved.

CP-10. Reserved.

CP-11. Reserved.

C. Synthetic natural gas:

CP-12. Docket Nos. CP77-495, CP77-596 and CP77-598, Transcontinental Gas Pipe Line Corp.

CP-13. Reserved.

CP-14. Reserved.

CP-15. Reserved.

D. Liquefied natural gas:

CP-16. Docket No. CP77-418, Texas Eastern Transmission Corp. and Consolidated System LNG Co., Docket No. CP71-290, Consolidated System LNG Co.

CP-17. Reserved.

CP-18. Reserved.

CP-19. Reserved.

E. Storage:

CP-20. Docket No. CP66-237, Natural Gas Pipe Line Co. of America.

CP-21. Reserved.

CP-22. Reserved.

CP-23. Reserved.

F. Curtailment:

CP-24. Docket No. RP72-99, Transcontinental Gas Pipe Line Corp.

CP-25. Docket No. RP75-80, Alabama-Tennessee Natural Gas Co.

GAS AGENDA—53D MEETING, FEBRUARY 15, 1978, REGULAR MEETING

CAG-1. Docket No. CP78-110, South Georgia Natural Gas Co.

CAG-2. Docket No. CP77-461, Cities Service Gas Co.

CAG-3. Docket No. CP76-464, Equitable Gas Co.

CAG-4. Docket No. CP78-101, Montana-Dakota Utilities Co.

CAG-5. Docket No. CP78-94, Tennessee Gas Pipeline Co., a division of Tenneco Inc.

CAG-6. Docket No. CP78-80, Mountain Fuel Resources, Inc.

CAG-7. Docket No. CP78-75, Arkansas Louisiana Gas Co., Docket No. CP78-113, Panhandle Eastern Pipe Line Co.

CAG-8. Docket No. CP78-51, Southern Natural Gas Co. and United Gas Pipe Line Co.

CAG-9. Docket No. CP78-48, Arkansas Oklahoma Gas Corp.

CAG-10. Docket No. CP73-73, Natural Gas Pipeline Co. of America.

CAG-11. Docket No. CP73-43, Mountain Fuel Supply Co.

KENNETH F. PLUMB,
Secretary.

[S-319-78 Filed 2-8-78; 2:18 pm]

[6210-01]

7

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, February 15, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appointment of an officer at a Federal Reserve Bank.
2. Proposed negotiation of competitive purchases of computers and computer equipment within the Federal Reserve System.
3. Possible amendments to section 23A of the Federal Reserve Act to be submitted to the Congress.
4. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: 202-452-3204.

Dated: February 7, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-314-78 Filed 2-8-78; 8:56 am]

8

NATIONAL RAILROAD PASSENGER CORPORATION.

In accordance with rule 4d. of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the following item will be added to the agenda for the Special Board of Directors Meeting of February 8, 1978:

2. Internal personnel matters.

Board members Besson, Dunlop, Head, Jacobs, Langdon, Lorentzen, Luna, MacDonald, Quinn, and Reistrup determined by recorded vote that the business of the Corporation requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time.

The revised agenda for the meeting follows:

Closed session:

1. Litigation matters.

2. Internal personnel matters.

Inquiries regarding the agenda for the February 8, 1978, Special Board Meeting should be directed to the Corporate Secretary at 202-383-7973.

Dated: February 7, 1978.

ELYSE G. WANDER,
Corporate Secretary.

[S-317-78 Filed 2-8-78; 10:26 am]

[4910-58]

9

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9:30 a.m., Thursday, February 16, 1978 (NM-78-8).

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Pipeline Accident Report.—Alyeska Pipeline Service Co., Explosion and Fire, Pump Station 8, near Fairbanks, Alaska, July 8, 1977.
2. Discussion.—Closeout of Safety Recommendations A-786-109, A-76-114, and A-76-115.
3. Discussion.—Closeout of Intermodal Safety Recommendations.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming 202-472-6022.

[S-316-78 Filed 2-8-78; 9:37 am]

[7710-12]

10

POSTAL SERVICE.

On February 7, 1978, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of its meeting currently scheduled for March 7, 1978. Each of the members of the board voted in favor of partially closing the meeting, which is expected to be attended by the following persons: Governors Wright, Holding, Ching, Coddling, Hardesty, and Robertson; Postmaster General Bailar; Deputy Postmaster General Bolger; Secretary to the Board Cox; and Senior Assistant Postmaster General (Employee and Labor Relations) Conway.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's possible strategies and positions in anticipated collective bargaining negotiations involving parties to the 1975 National Agreement between the Postal Service and four labor organizations representing certain postal employees, which is scheduled to expire in July of 1978.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions,

and consequently the cost, quality, and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. § 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3) and 552b(c)(9)(B) of title 5 and section 410(c)(3) of title 39, United States Code, and sections 7.3(c) and 7.3(i) of title 39, Code of Federal Regulations.

LOUIS A. COX,
Secretary.

[S-318-78 Filed 2-8-78; 2:18 am]

FRIDAY, FEBRUARY 10, 1978

PART II



**DEPARTMENT OF
LABOR**

**Occupational Safety and
Health Administration**

**OCCUPATIONAL
EXPOSURE TO BENZENE**

**Occupational Safety and Health
Standards**

Revised
1978
1978
1978

[4510-26]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Occupational Exposure to Benzene

AGENCY: The Occupational Safety and Health Administration, Department of Labor.

ACTION: Permanent standard for the regulation of benzene.

SUMMARY: This standard is based on a determination by the Occupational Safety and Health Administration (OSHA) that the available scientific evidence establishes that employee exposure to benzene presents a cancer hazard—specifically, the hazard of developing leukemia. Therefore, in accordance with OSHA's regulatory approach to the control of employee exposure to carcinogens, this standard limits employee exposure to benzene to the lowest feasible level, in this case 1 part benzene per million parts of air (1 ppm) as an 8 hour time-weighted average concentration, with a ceiling level of 5 ppm for any 15 minute period during the 8 hour day. The standard also prescribes limits on eye and skin contact with benzene.

The standard provides for the measurement of employee exposure, engineering controls, work practices, personal protective clothing and equipment, signs and labels, employee training, medical surveillance and record-keeping.

EFFECTIVE DATE: March 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Gail Brinkerhoff, Office of Compliance Programs, OSHA, Third Street and Constitution Avenue NW., Room N3112, Washington, D.C. 20210, telephone 202-523-8034.

SUPPLEMENTARY INFORMATION: This permanent Occupational Safety and Health standard is issued pursuant to sections 6(b), 6(c) and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1596, 1599; 29 U.S.C. 655, 657), the Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911. The new standard on occupational exposure to benzene which appears at 29 CFR 1910.1028, applies to all employment in all industries covered by the Act. For reasons set out below, the standard does not apply to the distribution or use of gasoline and other fuels, used as fuels, subsequent to discharge from bulk terminals. Moreover, the standard applies labelling and training requirements only to sealed, intact containers of benzene.

This document also amends Table z-2 of 29 CFR 1910.1000 by adding a footnote which provides that benzene exposures not covered by the new § 1910.1028 are still covered by the exposure level and other requirements of § 1910.1000. Pursuant to section 4(b)(2) of the Act, OSHA has determined that this standard is more effective than corresponding standards now applicable to the maritime and construction industries and currently contained in Subpart B of Part 1910, and Parts 1915, 1916, 1917, 1918 and 1926 of Title 29, Code of Federal Regulations. Therefore, those corresponding standards are superseded by the new standards in § 1910.1028. A new paragraph (c) is added to § 1910.19 to clarify the applicability of this new benzene standard to the construction and maritime industries.

I. BACKGROUND

Benzene (C₆H₆) is a clear, colorless, non-corrosive, highly flammable liquid with a strong, rather pleasant odor. Benzene's low boiling point and high vapor pressure cause it to evaporate rapidly under ordinary atmospheric conditions, giving off vapors nearly three times heavier than air.

Benzene is produced primarily by the petrochemical and petroleum refining industries by a process called catalytic reformation, which converts certain lower octane hydrocarbons into higher octane aromatics. These two industries are responsible for 94 percent of the total U.S. production of benzene. Recovery through catalytic reformation, including the benzene formed from the hydroalkylation of toluene, accounts for almost 80 percent of the total quantity produced. Recovery of coal-derived benzene, primarily as a by-product of the coking process in steel mills, was once the major source of benzene. Today, however, it accounts for only 6 percent of the total U.S. production.

The production of benzene is rapidly expanding with approximately 11 billion pounds produced in 1976. Only eleven other chemicals and only one other hydrocarbon (ethylene) are produced in greater tonnage in the U.S. Approximately 86 percent of this benzene is used chiefly as an intermediate in the production of other organic chemicals, including styrene, phenol, and cyclohexane. The remaining amount is used primarily in the manufacture of detergents, pesticides, solvents and paint removers. Benzene is also present as a component of motor fuels, averaging less than 2 percent in gasoline.

The first major industrial use of benzene, however, was as a solvent in the rubber industry just preceding World War I. During World War I, benzene production was stimulated greatly by the demand for and result-

ing production of toluene in the manufacture of explosives. The large quantities of benzene which were produced, resulted in its more widespread use as a starting point for the manufacture of various organic compounds. This situation led to greatly increased uses of benzene as a solvent in the artificial leather, rubber goods, and rotogravure industries.

Industries and processes currently using benzene include the chemical, printing, lithograph, rubber cements, rubber fabricating, paint, varnish, stain removers, adhesives, and petroleum industries. Benzene is also used extensively in chemical laboratories as a solvent and as a reactant in numerous chemical applications. Where benzene is produced and used in large amounts, it is generally used in enclosed systems, although exposures can occur during liquid transfer operations, from equipment leakage and carryover losses, and in maintenance operations.

II. HISTORY OF REGULATION

Benzene has been recognized as a toxic substance capable of causing acute or chronic effects since 1900. In 1927, on the basis of extensive examination of exposed workmen and animal inhalation data, Winslow recommended an exposure limit of 100 ppm for benzene (Ex. 156-3, Annex D).¹ In 1934, partially as a result of the fact that benzene toxicity in the shoe leather industries was a serious problem in that state, the Massachusetts Department of Labor and Industries established a Division of Occupational Hygiene (Ex. 156-3, p. 2). Relying on reports by Bowditch, Hunter, Mallory and Elkins of cases of benzene poisoning occurring at concentrations below 100 ppm, the Massachusetts Division of Occupational Hygiene reduced the maximum acceptable limit (MAC) to 75 ppm (Ex. 156-3, p. 6-7). In the 1940's, as a result of blood abnormalities and one death among leather workers exposed to benzene concentrations ranging from 40 to 80 ppm, Massachusetts lowered the permissible limit of benzene exposure to 35 ppm (Elkins Ex. p. 7).

The American Conference of Governmental Industrial Hygienists

¹The exhibit numbers used in this document refer to the certified exhibit list of the benzene rulemaking proceeding. The first number designates the particular exhibit on that list. Where the exhibit contains more than one item, the second number references the particular item of the exhibit. The designation "PC" refers to posthearing comments in Exhibit 217. The designation "Tr" refers to the transcript of the benzene hearing and indicates the pages of that transcript which are referenced.

All references in this document are intended to provide examples of record support for the information stated.

(ACGIH) recommended in 1946 a threshold limit value (TLV) for benzene exposure of 100 ppm. This TLV was reduced in 1947 to 50 ppm. In 1948, following Massachusetts' lead, ACGIH adopted a TLV of 35 ppm. In 1963, a TLV of 25 ppm was proposed by the ACGIH. The effects of benzene noted by ACGIH at this time were blood changes, aplastic anemia and other blood dyscrasias. No mention was made of any association of leukemia with benzene exposure (Ex. 191). It was not until 1974 that the ACGIH adopted the TLV of 10 ppm which had sometime earlier been recommended by the American National Standards Institute (Ex. 156-3, p. 7).

The present OSHA standard for benzene (29 CFR Part 1910.1000, Table Z-2) was adopted in 1971 from the Z 37.4-1969 consensus standard of the American National Standards Institute (ANSI). The OSHA standard was adopted without rulemaking under the authority of section 6(a) of the Act. It prescribes, as the ANSI standard, an 8-hour TWA of 10 ppm with an acceptable ceiling concentration of 25 ppm and, in addition, allows excursions above the ceiling to a maximum peak concentration not to exceed 50 ppm for more than 10 minutes in any 8-hour work period. Neither the ANSI standard nor the resultant OSHA standard was based on the possible leukemogenic effects of exposure to benzene.

In 1974, pursuant to section 22(d) of the Act, the Director of NIOSH submitted to the Secretary of Labor a criteria document concerning occupational exposure to benzene which stated that "the possibility that benzene can induce leukemia cannot be dismissed." (Ex. 32A, p. 1). However, NIOSH recommended retention of the existing permissible exposure limit of 10 ppm and ceiling concentration of 25 ppm as measured over a 10 minute period. This recommendation was not based on benzene's potential leukemia hazard.

In a letter to the Secretary of Labor, dated April 23, 1976, the United Rubber, Cork, Linoleum, and Plastic Workers of America urged that an emergency temporary standard regulating occupational exposure to benzene be issued (Ex. 2-42). This request was denied on May 18, 1976 by then Secretary of Labor, William J. Usery (Ex. 2-43).

Also in 1976, the National Academy of Sciences, under contract with the United States Environmental Protection Agency, reviewed the literature concerning health effects of benzene exposure (Ex. 2-4). The Academy concluded that benzene must be considered a suspect leukemogen.

In August 1976, NIOSH submitted to OSHA an updated criteria document which revised its earlier assessment of

1974 (Ex. 2-6). On the basis of a review of old studies and new data, NIOSH concluded in that document that benzene was a leukemogen. This report further pointed out that "It is apparent from the literature that benzene leukemia continues to be reported." NIOSH, therefore, recommended that since no safe level for benzene exposure could be established that, "no worker be exposed to benzene in excess of 1 ppm in air." Following publication of the updated criteria document, the Director of NIOSH recommended to the Assistant Secretary of Labor, by letter dated October 27, 1976, that OSHA publish an emergency temporary standard for benzene establishing the exposure level at 1 ppm (Ex. 2-6).

Based on the information supplied by NIOSH, OSHA issued on January 14, 1977, voluntary "Guidelines for Control of Occupational Exposure to Benzene," recommending that exposure to benzene in air not exceed an 8-hour time-weighted average to 1 ppm in any 8-hour shift of a 40 hour week (Ex. 2-44).

In January 1977, NIOSH informed OSHA that workplace environments had been found in St. Mary's and Akron, Ohio where a sufficient number of employees had been exposed to benzene for a number of years to facilitate an epidemiological study of health risks (Ex. 2-45). The worksite was a manufacturing plant owned by Goodyear Tire and Rubber Company which utilized benzene at various stages in the production of pliofilm. The preliminary conclusions of the epidemiological study, which NIOSH conducted of the pliofilm workers, were transmitted to OSHA on April 15, 1977. In his letter of April 15, 1977, transmitting this report, the Director of NIOSH again urged that an emergency standard be issued (Ex. 2-7).

On May 3, 1977, the Assistant Secretary for OSHA issued an Emergency Temporary Standard for Occupational Exposure to Benzene (42 FR 22516), pursuant to sections 6(c) and 8(c) of the Act, Secretary of Labor's Order No. 8-76, and 29 CFR Part 1911. A correction document was published on May 10, 1977 (41 FR 23601), and an amendment to the emergency temporary standard was published on May 24, 1977 (42 CFR 26429). The evidence and findings supporting issuance of the emergency temporary standard and its amendment and a discussion of its provisions are set forth in the aforementioned FEDERAL REGISTER publications. The emergency temporary standard was to have been effective on May 21, 1977. However, as a result of challenges to that standard, filed both in the Court of Appeals for the District of Columbia (*Industrial Union, AFL-CIO v. Bingham*, No. 77-

1395) and in the Court of Appeals for the Fifth Circuit (*API v. OSHA*, No. 77-1516), a temporary restraining order was issued by the Fifth Circuit on May 20, 1977, and the standard never officially went into effect.

On May 27, 1977, OSHA published a proposed permanent standard to control occupational exposure to benzene (42 FR 27452). The emergency temporary standard and its preamble, which the new proposal supplemented, were incorporated in that proposal. The FEDERAL REGISTER document setting forth the proposal also contained a notice of hearing scheduling an informal public hearing to be held pursuant to section 6(b)(3) of the Act, and requesting the submission of written comments, data, views and arguments on all the issues raised by the proposed permanent standard and the emergency temporary standard. Subsequently, on June 24, 1977 (42 FR 32263), OSHA excluded from the scope of the benzene hearing and from the final permanent standard those activities related to the storage, transportation, distribution, dispensing and sale of gasoline as a fuel subsequent to its discharge from bulk terminals. OSHA explained in that notice its intention to assess the regulatory action to be taken to protect workers involved in these activities after conclusion of the deliberations of a joint EPA-NIOSH-OSHA Task Force.

The public hearings on the benzene proposal were held July 19 through August 10, 1977. A total of 95 individuals appeared at these hearings as witnesses. Among the witnesses were employers and employer associations from a variety of industries: petroleum refining, petrochemical, oil and gas production, aviation fueling; and coke ovens and coke by-products. In addition, representatives of the affected workforce, including a number of employees who have been exposed to benzene, unions, government agencies, public interest groups and other interested parties appeared. Furthermore, comments were received from representatives of other industries, such as analytical and research laboratories, paint manufacturing, construction, maritime, and rubber manufacturing and from users of pure benzene as well as users of benzene contaminated solvents. Public participation was representative of a large segment of the benzene users. The verbatim transcript of the hearings, as well as the numerous comments, exhibits and briefs submitted to OSHA before, during and after the hearings, are part of this rulemaking record, along with other relevant documents. The hearing record was originally scheduled to close on August 20, 1977 but, at the request of industry participants, the record was kept open until September 2, 1977 for the submission of addition-

al evidence and until September 27, 1977 for the submission of briefs, summaries and arguments.

In conjunction with the development of the proposed standard, OSHA prepared a draft environmental impact statement. The draft environmental statement was published in the *FEDERAL REGISTER* (42 FR 27455). On June 17, 1977, the Council on Environmental Quality published a notice of availability of the benzene draft environmental impact statement (Ex 7). In addition to the 45 day comment period specified in 29 CFR 1999.4(g), the environmental impact of the proposed standard was also an issue for the benzene hearing as provided by 29 CFR 1999.4(h) and the notice of proposed rulemaking (42 FR 27452). A notice of availability of the final environmental impact statement for benzene was published on February 3, 1978 by EPA (43 FR 4674).

In addition to the draft environmental impact statement, OSHA prepared an economic and inflationary impact assessment of the proposed standard evaluating factors relevant under section 6(b) of the Act (29 U.S.C. 655 (b)(5)). Secretary of Labor's Order 15-75 (40 FR 54484) and Executive Orders Nos. 11821 (39 FR 41501) and 11949 (42 FR 1017). The notice of the proposed standard indicated that the economic impact of this proposal was to be considered at the hearing (42 FR 27452) and certified that the economic and inflationary impact of the proposed standard has been carefully evaluated in accordance with Executive Orders 11821 and 11949.

This permanent benzene standard is based on a careful consideration of the entire record in this proceeding, including materials relied on in the emergency temporary standard, materials referenced in the proposal, and the record of the informal rulemaking hearing including the transcript, exhibits and pre-hearing and post-hearing written comments. Copies of the official list of hearing exhibits, comments, and notices of intent to appear at the hearing can be obtained from the Docket Office, Docket H-059, Room S6212, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

III. PERTINENT LEGAL AUTHORITY

The primary purpose of the Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman. One means prescribed by Congress to achieve this goal is the authority vested in the Secretary of Labor to set mandatory safety and health standards.

Occupational safety and health standards provide notice of the requisite conduct or exposure level and provide a basis for assuring the existence of safe and healthful workplaces. The act provides that:

The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. (Section 6(b)(5).)

Sections 2(b) (5) and (6), (20), (21), (22), and (24) of the Act reflect Congress' recognition that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose-response data may not exist for many toxic materials or harmful physical agents. Nevertheless, standards cannot be postponed because definitive medical or scientific evidence is not currently available. Indeed, standards need only be based on the best available evidence. The legislative history makes it clear that "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Committee on Education and Labor, Report No. 91-1291, 91st Cong., 2d Session, p. 18 (1970). This Congressional judgment is supported by the courts which have reviewed standards promulgated under the Act. In sustaining the standard for occupational exposure to vinyl chloride (29 CFR 1910.1017), the U.S. Court of Appeals for the Second Circuit stated that "it remains the duty of the Secretary to act to protect the working man, and to act even in circumstances where existing methodology or research is deficient." *Society of the Plastics Industry Inc. v. Occupational Safety and Health Administration*, 509 F. 2d 1301 (C.A. 2 1975), cert. den. 95 S. Ct. 1998, 4 L. Ed. 2d 482 (1975). A similar rationale was applied by the U.S. Court of Appeals for the District of Columbia Circuit in reviewing the standard for occupational exposure to asbestos (29 CFR 1910.1001). The Court stated that:

Some of the questions involved in the promulgation of these standards are on the frontiers of scientific knowledge, and consequently as to them insufficient data is presently available to make a fully informed factual determination. Decision-making must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual judgments.

Industrial Union Department, AFL-CIO v. Hodgson, 499 F. 2d 467, 474 (C.A.D.C. 1974).

In setting standards, the Secretary is expressly required to consider the fea-

sibility of the proposed standards. Senate Committee on Labor and Public Welfare, S. Rep. No. 91-1282, 91st Cong., 2d Sess., p. 58 (1970). Nevertheless, considerations of technological feasibility are not limited to devices already developed and in use. Standards may require improvements in existing technologies or require the development of new technology. *Society of the Plastic Industry, Inc. v. Occupational Safety and Health Administration*, supra at 1309.

Where appropriate, the standards are required to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, and appropriate medical examination (section 6(b)(7)). Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding occupational accidents and illnesses (section 8(c)). The permanent standard for benzene was developed on the basis of the above legal considerations.

IV. HEALTH EFFECTS

A. GENERAL

Inhalation is the primary route of entry of benzene in man. Benzene diffuses rapidly through the lungs and is quickly absorbed into the blood. The rate of absorption is greatest during the first five minutes and thereafter declines significantly. Benzene saturation of the circulating blood may reach as high as 70-80 percent saturation level within the first 30 minutes. However, relatively complete saturation of the blood may not be attained for two to three days.

The benzene absorbed by the circulating blood is distributed throughout the body where, because of its liposolubility, it tends to accumulate in various body organs in proportion to their fat content.

Upon removal from benzene exposure, the concentration of benzene in the expired breath follows an exponential decay curve, reflecting removal of benzene from various body compartments. Elimination via this route for relatively high concentrations has been estimated to range from 12 to 50 percent of the total amount of benzene absorbed in humans.

Most of the absorbed benzene remaining ultimately is metabolized by enzymes contained in the liver to derivatives which are more water soluble thereby facilitating their removal by the kidneys. A first intermediate in the biotransformation of benzene is believed to be benzene epoxide, a highly reactive chemical. This is one of several candidates—others: Hydro-

quinone and catechol, (Snyder Tr. 3229) suggested as the active agent responsible for benzene's hematotoxic effects. Phenol, and to a lesser extent, hydroquinone, pyrocatechol, and phenyl-mercapturic acid are the primary metabolites of benzene found in urine.

B. ACUTE EFFECTS

Exposures to high concentrations of benzene produce an almost immediate effect upon the central nervous system. Benzene concentrations near 20,000 ppm are fatal within minutes, with death occurring from acute circulatory failure or coma, with or without convulsions. Milder exposures produce a period of nervous excitation, euphoria, headache and nausea, followed by a period of depression which can result in cardiovascular collapse and/or unconsciousness. The occurrence of nonspecific nervous disturbances as an after-effect of acute exposures is dependent on duration of unconsciousness and/or severity of circulatory failure. Breathlessness, nervous irritability, and unsteadiness in walking have been observed to persist for a period of several weeks. Inhalation of still lower concentrations (250-500 ppm) yields signs and symptoms of mild poisoning, characterized by vertigo, drowsiness, headache, and nausea. Rapid recovery from these symptoms usually occurs following cessation of exposure.

These effects due to acute exposures to high concentrations of benzene have been recognized for many years and are well documented in classic toxicological textbooks and literature.

Direct contact with the liquid may cause erythema and blistering. Prolonged or repeated skin contact, even with small quantities of benzene, has been associated with the development of a dry, scaly dermatitis, or with secondary dermal infections.

C. CHRONIC EFFECTS

1. *Background.* The primary focus of this regulation is to minimize worker risk resulting from chronic exposure to low levels of benzene. These effects of benzene exposure in man have been recognized for approximately 80 years. As benzene attacks the hematopoietic (blood-forming) systems and especially the bone marrow, its toxicity is manifested primarily by alterations in the level of the formed elements in the circulating blood (red cells, white cells, and platelets). The degree of severity ranges from mild and transient episodes to severe and fatal disorders. The mechanism by which benzene produces its toxic effects, although under investigation, is still unknown. (Goldstein, Ex. 43.B, p. 132).

The adverse hematopoietic effects of benzene, including leukemia, have been documented in a variety of indus-

tries and occupations and include the rubber, shoe, rotogravure, painting, chemical processing, can manufacturing industries and more recently, the manufacture of natural rubber cast film. These studies range from single case reports, through cross-sectional studies to retrospective studies of morbidity-mortality among a defined cohort of workers industrially exposed to benzene. An important distinction among these investigations is that the cross-sectional method detects cases of mild benzene-induced hematotoxic effects in current employees who do not demonstrate signs of overt toxicity, whereas the retrospective method detects overt and fatal toxic effects subsequent to termination of employment.

OSHA is aware of the varying quality of the individually reported studies. Based on a review of the entire set of studies, taken as a whole, the accumulated evidence is conclusive that benzene exposure is causally related to the induction of leukemia (a cancer of the blood-forming system), various cytopenias (decreased levels of a formed element in the circulating blood), aplastic anemia (a non-functioning bone marrow) and to development of chromosomal aberrations.

The evidence supportive of this conclusion is derived from: (a) A high degree of association of blood dyscrasias with benzene exposure; (b) the apparent lack of a similar association with other known volatile chemicals in the same workplace; (c) outbreaks of hematotoxicity temporarily related to the introduction of benzene to an industry and conversely, a reduction in blood-related disease when other solvents are substituted for benzene; and (d) the experimental demonstration of marrow toxicity in animals solely exposed to benzene (Goldstein, Ex. 43.B, p. 133).

The following studies are representative, although by no means all inclusive, of the published literature on the chronic effects of benzene exposure. These investigations do, however, illustrate the diversity and variability of the effects which dominate published reports. There are also several recent reviews and summaries concerning the hematological effects resulting from benzene exposure (See: Vigliani and Forni, Ex. 2-15; National Research Council, Ex. 2-4; NIOSH, Ex. 2-3, 2-5; NYU report; Ex. 43.B and ORC/Jandl, P.C. 34; Snyder and Kocsis, Ex. 2.B-288, and the International Workshop on the Toxicology of Benzene ("International Workshop") (Ex. 18).

2. Non-Malignant Blood Disorders.

a. *Human studies.* The most common effect resulting from chronic exposure to benzene is a decrease in the levels of erythrocytes (red blood cells), leukocytes (white blood cells) and thrombocytes (platelets) in the

circulating blood. In simplified terms, a decline in red cells is termed anemia, a decrease in the level of white cells is leukopenia and a decline in the platelet count is called thrombocytopenia. Persons found to have depressed blood cell counts may or may not depending, in part on the severity of the decline, display overt physical symptoms. Anemia results in a decreased capacity of the blood to transport oxygen to various parts of the body, and persons so diagnosed may appear pale and weak and fatigue easily. However, the non-specific symptoms may develop gradually and not require medical attention until there are significant declines in red cell counts and blood hemoglobins. Chronic anemia may also result in physiological adjustments by the cardiovascular system and exacerbate difficulties in those with coexisting disease such as coronary insufficiency or chronic obstructive bronchopulmonary disease (Wintrobe, Ex. 2A-107, p. 532). Since white cells provide a defense against many diseases, persons with leukopenia are prone to recurrent infections. Goldstein has written that "Infections are a dreaded complication of bone marrow toxicity and not uncommonly associated with a cause of death in benzene-induced pancytopenia" (Ex. 43.B, p. 144). Thrombocytopenia results in an impaired clotting of the blood, and persons with this disorder may exhibit bleeding tendencies, such as easy bruising, nosebleeds, and hemorrhage.

*In the NYU review of "A Critical Evaluation of Benzene Toxicity", Goldstein uses the term pancytopenia in a general sense, defined as a decrease in the level of circulatory erythrocytes, granulocytes, and platelets. His rationale is that there is excellent evidence which suggests that all of these cell lines originate from a common precursor stem cell (Exhibit 43B, p. 135). While noting that aplastic anemia is, in a pure sense, an absence or a decrease in identifiable granulocyte, erythrocyte, and platelet precursors within the marrow itself, Goldstein finds that it is useful to include aplastic anemia or hypoplastic anemia under the category of pancytopenia. This is because in some human cases of pancytopenia induced by benzene and in some animal experiments, a hyperplasia of the bone marrow is observed; also there exists the possibility that sampling errors may affect attempts to quantitate bone marrow precursor cells, since only a small fraction of the marrow is observed by aspiration techniques.

However, Jandl feels that aplastic anemia is not a sufficiently explicit term to describe failure of "marrow to provide an adequate population of dividing blood cells for the 3 series of formed elements," and observes that the terminology "aplastic anemia" has been applied to states of chronic or non-acute marrow suppression, whether or not anemia was the most striking feature (ORC/Jandl PC 34, p. 83, Add. 3(1)). Other terms used synonymously have been "hypoplastic anemia, bone marrow failure, refractory anemia and regenerative anemia." Based on the degree of severity exhibited, Jandl recognizes 2 phases of marrow failure:

Footnote continued on next page.

Pancytopenia and aplastic anemia are more serious conditions in which all 3 formed elements are depressed. These non-cancerous diseases may, in and of themselves, be fatal. An additional concern is that some or all of these disorders induced by benzene, may, if allowed to continue, either progress to or represent a preleukemia stage which may eventually evolve into a frank leukemia.

Among the early studies describing benzene toxicity was that of Selling (Ex 2-12). He observed a significant depression in the levels of circulating blood cells in workers employed where benzene was used as a solvent for rubber. Because of the depressed condition seen in the marrow of his patients and the results of extensive animal experiments (where he was able to produce both destructive and "regenerative" effects by subcutaneous injection of benzene), Selling suggested that the cause of the cytopenias observed in the workers was due to an aplasia of the marrow.

An important early milestone of the benzene literature was the 1922 report by Hamilton entitled "The Growing Menace of Benzene (Benzol) Poisoning in American Industry" (Ex 159.C).

The document attempted to alert the medical community to the dangers associated with chronic benzene poisoning which was less well known than acute toxicity. This was followed several years later by the reports of the National Safety Council (NSC) which reported the prevalence of known cases by chronic benzene poisoning. These results are summarized by Jandl as follows:

The magnitude of toxicity—primarily consisting of lowered blood cell counts—was shockingly high. Over half of the workers exposed for a year or more had abnormalities or cytopenias of the blood cells, a great proportion had pancytopenia, and a number of deaths were noted, characterized by preceding pallor, weakness, easy bruising, hemorrhage and often fulminant infections (ORC/Jandl, PC 34, p. 10-11).

More data relating occupational exposure to benzene to the occurrence of

blood disorders was provided in the late 30's and mid-40's by the studies of Greenburg et al., Mallory et al., and those of Hardy and Elkins.

Greenburg and co-workers (Ex. 2-8) investigated the problem of benzene toxicity among 332 workers employed in three rotogravure processes in New York City. In addition to physical examinations, including medical and occupational histories and laboratory tests, workplace air samples, and chemical analysis of ink solvents was performed in an attempt to provide a correlation with medical findings. Exposure data in Plant A revealed that of 11 samples taken, 8 were in excess of 100 ppm, in Plant B, 14 of 24 samples showed levels above 100 ppm and in Plant C, 6 of 13 samples exceeded 100 ppm, but of the total 48 samples taken, 33 were below 200 ppm. The medical results revealed that clinically evident degrees of "poisoning" were seen in 130 workers of which 22 had severe poisoning and 6 required hospitalization. Five of the workers with the most severe hematologic pictures expressed no subjective complaints, and physical examinations were negative. It is noteworthy that the individual sensitivity to benzene varied greatly. Moreover, the authors noted that the benzene-related blood changes may be persistent and could continue to develop even after exposure had ceased.

In the same year, Mallory et al. (Ex. 2-9) reported autopsy findings in 19 workers exposed to benzene from 6 months to 12 years, but no data from the work environment was available. The author noted that significant changes were consistently found throughout the entire hematopoietic system including the marrow, liver, spleen, and lymph nodes. Of the 19 cases studied, 6 exhibited hypoplasia of the bone marrow, whereas 9 cases showed hyperplasia and 2 were diagnosed as leukemic (1 acute myeloid; 1 acute leukemic). The authors concluded that exposure to benzene under varying conditions provided diverse reactions and that individual variation was of great importance.

In 1948, Hardy and Elkins (Ex. 2-10) investigated an artificial leather plant in Massachusetts where in 1946, a man employed as a coater for 12 years became ill and died from benzene poisoning. Sixteen of the 52 workers at the plant exhibited a "remarkable deviation" in more than one blood component, but none were clinically ill. Benzene concentrations taken in 1938 ranged from 45 to 80 ppm, and thereafter repeated tests at the work station of the deceased subject revealed a concentration of about 60 ppm. Elkins stated "[D]uring World War II, however, the plant worked long hours, so that presumably his (the decedent's) exposure overall had been greater

than would be indicated by the concentration of benzene found." (Elkins, Ex 156.3, p. 7). However, on the basis of this case, Elkins and others revised the PEL in Massachusetts to 35 ppm. The authors also concluded that workers exposed to benzene should have routine complete blood examinations and stressed the importance of preemployment medical evaluations which should include a medical history and a hematologic baseline.

In 1956, Savilahti reported on 147 workers who used a rubber adhesive dissolved in benzene, and who were exposed to approximately 400 ppm benzene (Ex. 2-95). Blood tests demonstrated hematological deficiencies in 73% of those examined. Thrombocytopenia, the most common symptom, was observed in 62% of those tested, followed by anemia (35%) and leukopenia (32%). Deficiencies in all 3 cell types were observed in 21% of those examined and deficiencies in two cell types in 14%. As a result of this investigation, the use of benzene as an adhesive solvent was discontinued.

In a nine-year follow-up to the Savilahti report, Hernberg et al. (Ex. 2A-252) reexamined 125 of these workers previously exposed to benzene who were free of such exposure since 1956. This is one of the few studies available which presents a longitudinal assessment of workers previously exposed to benzene for which follow-up exceeded 2 years. The results showed a greater tendency toward recovery of leukocytes than erythrocytes or platelets; a finding which is in agreement with other investigations. Among male workers, the mean erythrocyte levels remained depressed for 9 years and were significantly less than the values reported for the control group. Despite recovery in the mean level of the platelet counts during the nine-year interval, concentrations for both men and women remained significantly below that of a control group. Based on their findings, the authors stated that "The analysis also showed that the prognosis of the severe cases did not differ from that of the mild ones, provided the acute stage had been passed." (p. 204).

Worker exposure in the rubber coating industry to petroleum naphtha containing up to about 10% benzene was reported by Pagnotto et al. in 1961 (Ex. 159A). Several hemoglobin values less than the lower limit of normal were observed among 47 men given blood examinations. Benzene concentrations ranged from essentially zero to over 100 ppm, with a substantial number between 10 and 25 ppm. Their exposure to benzene ceased in 1965.

In 1973, blood tests were repeated on 18 of these workers who were still employed by the firm, the others having retired or left for other jobs (Pagnotto et al., Ex. 156.3.B). Selection bias may

Footnote continued from preceding page.

"[B]y convention, a diminution in the level of all blood cells produced in the marrow accompanied by evidence that bone marrow cellularity is deficient, but from which recovery occurs, usually, termed 'pancytopenia.' And by convention, a more sustained, more severe, more likely fatal suppression of the marrow is termed 'aplastic anemia.'" (P.C. 26B, p. 83, Add. 3(i)).

OSHA recognizes the usefulness and the technical reasons for Jandl's establishment of quantitative diagnostic criteria for various non-malignant blood disorders and his "reassignment" of diagnoses contained in the literature according to this classification scheme. However, for convenience sake, the terms "pancytopenia" and "aplastic anemia" are used interchangeably throughout the preamble except when discussing particular points contained in Jandl's review. In these instances, the terminology will reflect Jandl's more definitive nomenclature.

be inherent in this report as the retirees who were excluded may have been more likely to have had blood abnormalities. The blood picture of 14 out of 18 employees was characterized as "essentially normal" (Elkins, Ex. 156.3, p. 9); of the remaining 4, one was anemic, 2 were leukopenic and 1 was both anemic and exhibited leukocytosis (an elevated white blood cell count).

In 1969 Klinche et al. reported hematological damage at relatively low benzene concentrations (Ex. 2B-304). Eighteen roofers engaged in painting operations for an average of 17 years were investigated. Based upon a careful evaluation of the available results of hematological examinations, 6 were classified as suffering from early stages of benzene intoxication, 7 were suspected of chronic benzene intoxication and the remaining 5 were classified as having a normal blood picture. The paint solvent contained 0.12 percent benzene and benzene concentrations (as determined by Dräger gas detector tubes) ranged from trace amounts to 15 ppm. Concentrations of toluene and xylene vapor up to 133 ppm were also found. It was not possible to quantitate past exposure to aromatic solvents. The authors concluded, however, that:

In the case of painted or coated areas of sufficient size, even small traces of these aromatics in the work material (benzene, toluene, and xylene) even in the open air, can cause respiratory air concentrations of the level of the MAC value (15 ppm for benzene). After the workers have been exposed for a sufficiently long time, one must assume that hematological damage will result.

In a recent survey, Aksoy et al. compared the hematological findings of 217 apparently healthy male workers who were exposed to as much as 210 ppm benzene when adhesives containing benzene were utilized (Ex. 2-11). The duration of exposure ranged from 3 months to 17 years. Hematological abnormalities were seen in 23.5% of the workers. Leukopenia, with or without thrombocytopenia, was the most common finding. In addition, relative to controls, benzene exposed workers were found to have a statistically significant reduction (p less than 0.001) in mean white cell and platelet counts. Aksoy and his colleagues reported a considerable variability in the 11 bone marrow specimens studied. The aspirates showed both hypocellularity and hypercellularity (a decrease and an increase in the number of cells present), a finding consistent with his previous reports. (See Aksoy et al. Ex. 2A-290). In 33 percent of the workers examined, the hemoglobin levels fell below the lower limit of normal. Aksoy was reluctant to ascribe the anemia to benzene exposure since it was correctable by iron therapy. However, Goldstein

commenting on Aksoy's findings that "the mean corpuscular volume (MCV) was in the high normal to slightly elevated range (80-96 μ m³) which is unusual for iron deficiency and more in keeping with a benzene effect." (Ex. 43B, p. 140).

In 1977, Dow reported that 2 of the 594 individuals occupationally exposed to benzene died of non-malignant blood disorders, compared to 0.2 deaths expected (DOW/OH/Ex. 154, Table 6). One worker died of pernicious anemia 4 years after retirement. His exposure was estimated to have averaged 30 ppm for approximately 184 months. The second employee, who died of aplastic anemia, had an estimated exposure of 5 ppm for approximately 98 months. Because of the small numbers involved, the significance of Dow's findings is subject to some question, but the trend of excess death is consistent with the evidence presented above.

An issue deserving discussion is the similarity and difference between benzene-induced non-malignant blood disorders and those resulting from other causes. In the NYU report, Goldstein noted that:

While the literature is inadequate to draw firm conclusions, the progression and outcome [fatality rate] of benzene-induced pancytopenias does not appear to differ substantially from that of published series of patients with idiopathic aplastic anemia (Ex. 43B, p. 145). (Ex. 43B, p. 148)

The NRC report comes to a similar conclusion:

[T]he available evidence does not indicate that the reported benzene-induced blood dyscrasias differ in any way from similar dyscrasias which are caused by other myelotoxic agents or for which the etiology is unknown (NRC, Ex. 2-4 p. 4).

On the other hand, Jandl contends that the high degree of reversibility of benzene-induced non-malignant blood disorders distinguishes these disorders from those caused by other agents which are idiopathic in nature. He reports that the chance for recovery in idiopathic aplastic anemia is 16%, that for drug-related aplastic anemia it is 33% and that based upon a review of 169 patients with benzene-induced aplasia reported between the years 1939-1975, the prognosis for recovery is 87%. (ORC/Jandl, Ex. 34, p. 37) Furthermore, he notes that milder forms of blood disorders resulting from benzene exposure appears to be 100% reversible (ORC/Jandl, PC 34, p. 39).

*However, Goldstein does suggest three possible differences between benzene-induced pancytopenia and so-called idiopathic aplastic anemia: the first is the observance of marrow hyperplasia in benzene-induced disease; the second is the presence of lymphocytopenia; and the third is "relatively frequent but inconsistent" reports of red blood cell macrocytosis resulting from benzene exposure. (Ex. 43B, p. 148)

OSHA is aware that literature indicates that many cases of nonmalignant blood disorders may be reversed. For example, Maugeri has stated:

the hemopathy due to benzol can, as in most cases studied by us, be cured if it is diagnosed immediately (Maugeri & Pollini Ex. 156.1 p. 2).

Hernberg et al. in a follow-up study of 125 workers stated that: "the prognosis of these patients proved to be more favorable than might have been expected." (Ex. 2A-252, p. 209). Also, both Tabershaw and Aksoy have noted the reversibility of various cytopenias (Tr. 2547).

However, certain other investigators report that these disorders have persisted for as long as 12 years after cessation of benzene exposure. Goldwater and Tewksbury noted continued blood abnormalities in 10% of 108 men examined 24 months after exposure ended. (Ex. 141). Helmer observed abnormalities in 25% of 60 patients followed for 16 months, including 2 deaths. Rejcek and Rejskova found that 8 of 4500 workers manifested persistent leukopenia 12 years after exposure. (Cf. Hernberg, Ex. 2A-252, p. 204). Aksoy observed a further distinguishing feature of severe blood disorders resulting from benzene exposure. In over 100 cases of aplastic anemia classified as idiopathic or associated with etiological agents other than benzene, no cases of leukemia were observed (Aksoy, Ex. 60, p. 6A). This contrasts to the development of leukemia among some cases of aplastic anemia associated with benzene exposure.

As is apparent from the above discussion, there is no unanimity of opinion whether benzene-induced blood disorders persists, and are reversible after cessation of benzene exposure and whether such disorders differ from those resulting from other known or unknown causes.

OSHA recognizes that in many cases these disorders appear to be reversible, within the definitions of "normality" or "reversibility" used by the individual authors. However, it is not known whether for particular workers the blood indices actually return to pre-exposed or baseline values. Because the original literature does not provide suitable long-term longitudinal analysis including adequate sample size, preexposure values nor baseline hematological values for comparative purposes on an individual basis, it is difficult to decide how much reliance can be placed on such studies. Moreover, the evidence is insufficient to determine whether or not individuals who have "recovered" are at greater risk to subsequent development of leukemia.

Finally, OSHA is unable to verify Jandl's quantitative estimates of recovery as the sources selected for his calculations are not adequately presented to permit the development of

valid inferences. Consequently, the Agency does not believe it appropriate to conclude that these non-malignant blood disorders will in all cases, be reversed to the individual's normal values.

b. Animal Studies. One of the first studies describing experimentally induced benzene toxicity was published by Selling in 1916 (Ex. 2-12). He was able to produce both destructive and "regenerative" effects in rabbits by subcutaneous injections of commercially pure benzene in olive oil. Bone marrow specimens clearly demonstrated a constant, well defined aplasia associated with the disappearance of leukocytes in the peripheral blood. Later studies conducted by Gerarde demonstrated that a reversible hematopoietic injury in rats was produced at a concentration of 1 ml/kg administered by subcutaneous injection for 14 days (Ex. 2-64).

In an extensive review of experimental benzene intoxication (Ex. 43.B, Ch. V), Leong observed that the results from most of the inhalation studies reported up to Spring (1977) are difficult to interpret due to inadequacies in the experimental design. Many of the studies were conducted without proper control groups to allow comparison of hematologic values against experimental results. Factors such as age, sex, strain, hormone status and to a greater extent, emotional reactions of the animals and techniques used for blood sampling are known to affect hematological parameters. Because of these defects, many of the animal studies do not provide sufficiently definitive exposure-effect information.

In 1944, Svrbely and colleagues exposed rats to benzene vapors at a concentration of 1,000 ppm for 7 hours per day, 5 consecutive days a week for 28 weeks (Ex. 2A-201). Benzene-induced leukopenia was observed during the first half of the exposure period, followed by an increase in the white cell count during the latter part of the experiment. The significance of these results is unclear since similar shifts in the white cell count occurred in the non-exposed control group.

The hematological findings obtained in inhalation experiments at lower concentrations have demonstrated considerable variation. Guinea pigs and rats exposed to an average of 88 ppm benzene for 8 hours per day for 5 days a week demonstrated a mild leukopenia after 32 and 136 days of exposure, respectively (Cf. Leong, Ex. 43.B, pp. 89-90). Deichman et al. reported in 1963, that benzene can effect hematological changes, at even lower concentrations (Ex. 2-16). Eight groups of rats were exposed to benzene vapors at average concentrations of 831, 65, 61, 47, 44, 31, 29, and 15 ppm, respectively. The duration of exposure was 5 hours per day, 4 days per week for periods

ranging from 5 weeks to 7 months. Exposure to the 3 highest concentrations resulted in significant leukopenia after 2-4 weeks. A moderate, but definite leukopenia was reported in the groups exposed to 47 and 44 ppm after 5 to 8 weeks. No demonstrable alterations were observed at the 3 lowest concentrations during the 7 month experiment.

In a preliminary report submitted to OSHA prior to the rulemaking proceedings, Reinhart found no significant deviation of blood counts in test rats exposed to 388 ppm for 6 hours/day, 5 days a week for 12 consecutive weeks (Ex. 115.B.8). However, significantly depressed WBC counts were observed in mice, while in guinea pigs a progressive leukocytosis was observed which continued even into the post-exposure period. Reinhart used no control group, and the number of animals used per test group is considered to be inadequate.

Finally, Laskin and Goldstein prepared an abstract for the International Workshop on Toxicology of Benzene in Paris, November 9-11, 1976 describing their chronic benzene exposure studies (cf. Snyder, 156.2, p. 5; Ex. 178). For more than two years 150 Sprague-Dawley rats and 300 mice of 3 different strains were exposed to 100 or 300 ppm benzene 6 hours daily, 5 days per week. Anemia was observed in mice but not in rats. However, lymphocytopenia was observed in all animals without similar reduction in the granulocytes until the terminal stages of benzene poisoning. This study suggests that lymphocytopenia may be an early marker for benzene toxicity.

Based on the record, the extent of non-malignant blood disorders resulting from benzene exposure is uncertain. Based only on reports contained in the literature, Jandl has calculated a number of cases and deaths annually due to aplastic anemia in the United States. Based upon data derived from several consecutive case series over the past 15 years, Jandl estimates that a 2% "probable" and 2% "possible" benzene etiology for cases of aplastic anemia (presumably not including milder disorders such as pancytopenia). Using the annual figure of 420 cases of aplastic anemia in the United States, Jandl arrived at an approximation that "about 10 and possibly 20 patients die annually due to benzene exposure." (P.C. 26B, p. 40-1, 86-87).

Goldstein suggested several reasons why the true incidence of pancytopenia resulting from benzene exposure may be seriously underestimated (Ex. 43B, pp. 138-39):

(a) That mild cases of pancytopenia may not be discovered unless searched for since they often cause no overt symptoms.

(b) That since hematotoxicity induced by benzene is a phenomenon well

known to the medical community, such cases tend not to be recorded in the literature, and

(c) In cases of idiopathic aplastic anemia, possible relevant exposure to benzene may have been overlooked.

OSHA believes that the present data does not permit an accurate assessment of the morbidity or mortality for benzene-induced on nonmalignant blood disorders.

C. CONCLUSIONS

Industry participants have argued that the present permissible exposure limits (10 ppm TWA and 25 ppm ceiling) provide adequate protection against the non-malignant effects of chronic exposure to benzene. (AISI brief, PC 36, p. 51, 66; MCA brief, PC 35, p. 32).

Snyder has noted, "In both animals and man the lowest level of exposure demonstrated to produced bone marrow toxicity was approximately 40 ppm." (Tr. 3224-25). Elkins believes that threshold for injury to the blood-forming system is between 25 to 50 ppm (Tr. 3210); Tabershaw (Ex. 149A, p. 6) stated that cytopenia has not been demonstrated to occur below 25 ppm. ACGIH (Ex. 156.3D) and the International Workshop on Toxicology for Benzene, both recommended a 10 ppm TWA and 25 ppm ceiling. (Ex. 17).

Attention was drawn to the Dow morbidity study in which no abnormal blood findings were observed among 287 workers exposed to benzene for 1 to 20 years, at concentrations estimated to range from 2 to 30 ppm (Ex. 154).

The Pennzoil Company commented to OSHA that from the past nine years, 160 employees exposed to 1-5 ppm benzene have been monitored by blood test, with up to 25 years work experience for some there has been "no clinical evidence of medical problems associated with benzene." (Ex. 41.1, p. 2). However, no data were presented to allow an assessment of this statement. Others have reported similar views to OSHA again without formal presentation of data. (Joyner, Tr. 2286-87; Texaco, Ex. 41-4, p. 2, P.P.G. Industries, Ex. 6-41, p. 2 and Up John, Ex. 6-4, p. 1). It should be noted that these submissions were characterized by the American Iron and Steel Institute as largely "... anecdotal in nature" (Ex. 36, p. 64). In further support of its position, industry cites the 1974 NIOSH criteria document recommendation that a 10 ppm TWA as a "conservative limit" (Ex. 2-2, p. 73).

It is clear, there is no dispute that bone marrow toxicity can result from exposure to benzene above 25-40 ppm range. Furthermore, it is recognized that higher dosages produce increased response and that lower dosages are

associated with reduced response. It is not clear, what adverse health effects occur below 20 ppm.

There are suggestions of hematological alterations (other than chromosomal aberrations) at concentrations below 25 ppm. Pagnotto et al. indicated that such effects occurred among workers employed in rubber coating industry exposed to concentrations for the most part between 6 and 25 ppm benzene (Ex 2A-116; Tr. pp. 360-361). Horiguchi has reported small changes in leukocyte function concentrations as low as 10 ppm, in the absence of any marrow change and with only slight variations in leukocyte count and leukocyt phagocytic activity among workers exposed to benzene in concentrations of 0.8-6 ppm (Ex 2A-161, p. 7). And there are also other reports of less apparent effects at airborne levels of 6-16 ppm in workers who do not exhibit characteristic hematological abnormalities. (Kahn and Muzyka, Ex 2A-260). It is not possible at this time to establish with any confidence a consistent dose-response relationship between benzene exposure and adverse health effects.

Where exposure information is available, it is generally area sampling and not personal exposure data that is reported. It is difficult to determine individual worker exposure based on area sampling. Compounding this difficulty are problems related to the fluctuating character of occupational exposure; the small amount of long-term data; and the fact that in small populations, workers with heightened sensitivity may not be encountered. At lower exposure levels, there is a paucity of data to provide a basis for definitive conclusions as to the extent of nonmalignant effects. In this regard Battle states that:

[E]ven a cursory study of the literature reveals a distressing lack of exposure-hematologic effect data particularly in the low benzene exposure area of less than 10 parts per million. (PC 26C, p. 2).

Moreover, the absence of pre-exposure hematological values for comparative purposes limits the usefulness of the few studies and reports which are available, because we cannot tell whether a particular worker studied with blood values at either extreme of the normal range is suffering adverse effects. Therefore, the available literature is insufficient to permit construction of dose-effect curve.

As indicated above, the quality of evidence available in the record is considered insufficient to permit meaningful conclusions concerning exposure to benzene at low levels and resulting health effects. Industry participants have cited the 10 ppm level established by the ACGIH as evidence that this level can be considered safe. However, in establishing TLV's, ACGIH recognizes that for some work-

ers harmful health effects may result from exposure to the toxic substance at levels below the TLV. Therefore, the 10 ppm TLV for benzene is recognized by ACGIH as a level which does not protect all workers from material impairment of health.

Leukemia aside, with benzene we are dealing with an etiological agent well-documented to produce a variety of blood abnormalities, some of which are fatal. OSHA is aware of several studies reporting blood abnormalities at levels below 25 ppm, at levels perhaps as low as 10 ppm. Because of these considerations, and the wide range of human sensitivity to benzene, OSHA cannot determine a minimum effect level for benzene and, furthermore, cannot conclude that 10 ppm provides sufficient protection against non-neoplastic effects to all workers. OSHA recognizes that prudent public health policy, and established toxicological principles necessitates setting the permissible exposure limit sufficiently below the levels at which adverse effects have been observed to assure adequate protection for all exposed employees. It is customary to use a safety factor of 10-100 or greater depending on the seriousness of the toxic effects and the nature of the data being relied upon. That is, the lowest levels at which effects had been observed would be reduced by the safety factor chosen in establishing the exposure limit. Taking this approach in the case of benzene would lead to a permissible exposure substantially less than 10 ppm without regard to the issue of leukemia and the view that no safe level can be established for the carcinogenic risk.

IV. LEUKEMIA

A. DEFINITION AND DESCRIPTION OF THE DISEASE

Robbins defines leukemia as:

Leukemia may best be considered as a neoplasm (cancer) of the white blood cells and is so classified in the International Lists of Causes of Death. It is characterized chiefly by: The appearance of abnormal, immature white cells in the circulating blood; diffuse and almost total replacement of the bone marrow with the leukemic cells; and widespread infiltrates of the liver, spleen, and other tissues, analogous to metastatic dissemination of solid tissue cancer. (Ex. 2-24, p. 728).

Once leukemia is diagnosed there is virtually no chance of recovery. There are different categories of leukemia, depending on the duration of the disease, i.e., acute or chronic; an increase or non-increase in the number of abnormal cells, i.e., leukemia or aleukemia; and the cell type involved, i.e., myeloid, monocytic or lymphoid. Goldstein also emphasizes that, "there are other differences between various subtypes of leukemia in terms of incidence, clinical course, prognosis and

presumably etiological mechanism" (Ex 43B, p. 156).

The most prevalent subtype of leukemia in adults, and the type most commonly associated with benzene is acute myelogenous leukemia (AML). This disease is variously known as acute myeloid leukemia, acute granulocytic leukemia, and acute myeloblastic leukemia (ORC/Jandl, PC 34). There are several variants of AML, probably related to the pluripotential of the precursor cell and include erythroleukemia, (DiGuglielmo's Syndrome) and acute monocytic leukemia (myelomonocytic, or monomyelocytic). (ORC/Jandl, PC 34, p. 71).

Despite advances in leukemia therapy and the fact that half the adults diagnosed with AML enter into a remission (generally averaging 6 to 8 months) the prognosis of this disease remains poor (ORC/Jandl, P.C. 34, p. 73). Those who enter into remission have life expectancies averaging from 12 to 18 months, and those who fail to respond to therapy have a 50 percent survival rate of only 3 to 6 months. Aksoy noted that in his experience, for cases of benzene-induced leukemias, the period of survival after discovery was short, usually less than 6 months (Tr-275).

Myeloproliferative disorders, including chronic myelogenous leukemia (CML) have only occasionally been attributed to benzene. Lymphocytic leukemia is also subdivided into acute and chronic subtypes. The acute form (ALL), the type commonly seen in children, has only rarely been associated with benzene exposure. Chronic lymphocytic leukemia (CLL), a slowly progressive disease, and often not a cause of death, generally occurs late in life. There have been several reports associating CLL with benzene, most particularly in several reports of French origin. The evidence as to chronic lymphocytic leukemia, which will be discussed in detail later, does not appear to be conclusive.

B. STUDIES—HUMAN

Evidence in the record clearly demonstrates that benzene is a human leukemogen. Aksoy testified that the first case of leukemia due to benzene exposure was that published by Noir and Claude in France in 1897. (Aksoy, Tr 154). In 1939, Mallory, et al. described two cases of leukemia resulting from chronic exposure to benzene which supplemented ten previously reported in 1935 by Penati and Vigliani. (Mallory, Ex. 2-9), Mallory et al. stated:

Certainly no more favorable conditions for the development of neoplasm can be imagined than prolonged and intense stimulation of reproductive activity, and simultaneous arrest of maturation.

The evidence that chronic exposure to benzene produces leukemia in human beings is still incomplete but it is accumulating at a

rate and to a volume which command serious consideration. (Ex. 2-9, p. 365).

In 1965, in a partial review of the literature, Browning tabulated 61 cases of leukemia among individuals having reported prior exposure to benzene (Ex. 2-31). The majority (40) were of the myeloid series—including 12 cases of erythroleukemia, 7 were classified as lymphatic and the remaining 14 grouped under the heading of "aleukemic leukemia" (a type characterized by a decline in white blood cell number).

Vigliani and Saita, in their review of 47 individuals suffering from benzene hemotoxicity between the period of 1942 and 1963, presented clinical and laboratory accounts of six additional cases, all of whom were diagnosed as having haemocytoblastic leukemia (Ex. 2-27). The duration of exposure of these individuals to resins, inks, varnishes, or glues containing varying concentrations of benzene ranged up to 19 years. Data on the concentrations of benzene in the workplace environment were extremely limited or non-existent. Occupational histories and medical status prior to the final diagnoses were not available, but the authors stated that "attribution of the cases (of leukemia cited) to the exposure cannot be doubted." During the years 1962-63, Vigliani and Saita noted a sharp rise in the diagnosis of leukemia among individuals having reported prior exposure to benzene which coincided with an increase in the number of newly diagnosed benzene poisoning cases. The risk of acute leukemia for the workers exposed to benzene in Milan and Pavia was estimated to be about 20 times greater than the risk for the general adult population. (Ex. 2-27). In 1975, Vigliani and Forni observed that in the rotogravure industry no new cases of aplastic anemia nor of leukemia were found among workers exposed solely to toluene after this solvent was substituted for benzene in 1964. Although there have been some reports of hematological disorders associated with toluene exposure (See Girard et al., Ex. 2B-283), the finding of Vigliani is in concert with the conclusion of Bräir that, toluene and benzene are "quite different chemical entities from toxicological and pharmacological points of view" and that, "toluene free from benzene can be safely used in industry as a suitable solvent in replacement of benzene." (Ex. 39-5, p. 7). Vigliani and coworkers also observed that workers exposed to toluene did not exhibit chromosomal aberrations, a "finding" observed by these authors in employees who worked with benzene.

In 1972, Aksoy et al. reported the deaths of 4 Turkish shoemakers resulting from their exposure to benzene for periods ranging from 6 to 14 years (Ex. 2-29). At the time of the study, air

concentrations were found to be between 150-210 ppm of benzene. Previous occupational exposure data were not provided. Two of the four patients developed acute leukemia approximately two and three years after the occurrence of aplastic anemia, although the other two did not. These case reports are supplemented by surveys of newly diagnosed cases in a medical referral area. Aksoy summarized and updated his findings at the benzene rulemaking (Ex. 60). He pointed out that from 1967 to 1973, he had observed 26 patients with acute leukemia or preleukemia^{*} associated with benzene exposure. Based on a population of 28,500 shoeworkers in the area, Aksoy estimated the incidence of leukemia to be twice the prevailing value of 6/100,000 observed in the general population of Western nations. From September 1973 to 1975, 14 additional cases were admitted to the hematology departments in Istanbul and Cerrahpaşa Medical Schools making a total of 40 in all. Thirty-four of these patients were among the groups of shoeworkers described previously. Aksoy either examined the cases personally or reviewed the charts.

API has criticized Aksoy's use of the baseline figure of 6/100,000, citing a statement from Clemmensen, that the incidence rate for a standard European population is 8 to 14/100,000 (API Ex. pp. 50-51). However, Aksoy has testified that the two-fold excess estimate among benzene/exposed shoeworkers may be underestimated since the incidence of leukemia among the Turkish population is only 3.0 per 100,000. Moreover, Aksoy stated that "undoubtedly there were other additional patients among shoeworkers who were not included in our study" (Ex. 61, p. 2). Aksoy's findings of a decline in leukemia cases during the past several years after other solvents were substituted for benzene (Aksoy, Ex. 61, pp. 2-3) further provides, in an inverse manner, additional supportive evidence for the causal relationship between benzene and leukemia. This finding reinforces the results of Vigliani discussed above.

In his testimony, Marvin Sakol, an Akron hematologist, described what he considered an epidemic of a rare form of leukemia among workers employed in a small department at a local industry (Ex. 61). Over a nine year period, beginning in 1954, he observed nine cases of acute myeloblastic leukemia, including "at least four and probably all nine" with DiGuglielmo leukemia (erythroleukemia). Due to the

rarity of erythroleukemia Vigliani noted that the 20 or more cases attributable to benzene, reported in the literature seem to be significant (Ex. 2-49). Diagnoses from slides in some of Sakol's cases were confirmed personally by DiGuglielmo. He learned with much difficulty that all of these cases were exposed to benzene while employed in a Pliofilm operation at a plant subsequently studied by Infante et al. Sakol testified that he had knowledge of additional cases of benzene-related leukemia which have not been included in the NIOSH study. These cases may never be recorded officially because the families refused permission to release the names of the decedents for fear of loss of compensation and job. This testimony indicates an underestimation of the leukemic risk among Pliofilm workers.

Based on the hypothesis that the risk of leukemia was higher among workers who were exposed to benzene and medical X-rays, Ishimaru et al. conducted a retrospective epidemiological investigation examining the relationship between occupation and environmental factors, other than A-bomb exposure, and the incidence of leukemia in Nagasaki and Hiroshima between 1945 and 1967 (Ex. 2-33). Fifteen occupations were selected in which there had been exposure to either medical X-rays or solvents, especially benzene and its derivatives. This case-control study compared all cases diagnosed as definite or probable leukemias between 1945 and 1967 and residing at the time of the onset of the disease, in Hiroshima or Nagasaki. Controls were matched for city, sex, date of birth (± 30 months), distance from the atomic bomb explosion, and residence in either city at the onset of disease. Four hundred ninety-two leukemia cases were identified, and matched controls were obtained for 413. Three hundred and three adult cases with the onset of leukemia at age 15 years or over and their controls were compared. The risk of leukemia was found to be significantly higher (about 2.5 times greater) among those with a history of employment in occupations in which various volatile solvents were used as compared to those without. The relative risk was 1.8 times higher for chronic leukemia and 2.9 times higher for acute. Eighteen of the leukemia cases associated with solvents were located in distant and non-exposed radiation areas and were considered too far from the A-bomb explosion for radiation to have enhanced the increased risk. Accepting the source of error inherent in the method which was used to collect the data, the results of this study nonetheless reinforce the observation that an increase in leukemia existed in that portion of the population exposed to radiation and employed in an occupation where solvents especially benzene, were used.

^{*}The criteria used for the diagnosis of preleukemia were similar to those of Wintrobe: "[P]releukemia seems a reasonable term . . . when this diagnosis of AML may be suspected but cannot be made with any confidence." (Ex. 2-107, p. 1477).

In 1970, Girard et al. published an epidemiological study (Ex. 2B-283) undertaken to determine previous exposure to benzene or toluene in 401 patients suffering from malignant hemopathies. Extensive interviews about their work environment and chemical analyses of solvents were utilized to estimate exposure. Their findings demonstrated that compared to a control group admitted for non-hematological diseases there was a statistically significant greater frequency of past exposures to benzene or toluene among subjects with aplastic anemia, chronic lymphocytic leukemia and acute leukemia.

In April 1977, NIOSH submitted to OSHA a preliminary report by Infante et al. of a study of leukemia among benzene-exposed workers employed in the production of natural rubber cast film (Pliofilm) (Ex. 2-57, Ex. 2A-271).

The study included all white males assigned to the Pliofilm production area who were hourly employees and who at any time between January 1, 1940 and December 31, 1949 had direct exposure to benzene at the Goodyear Akron and St. Mary's plants. Only the men employed in a section having known potential exposure to benzene ("wet side" in industry terminology (Rinsky, Tr. 818-820)) were included in the cohort. Men employed in the Pliofilm operations, but not in production jobs (so called "dry side" workers) were not included in the study. Follow-up of vital status was attempted from termination of employment to June 30, 1975 and was achieved for 75% of the total of 748 benzene-exposed workers. So as not to overestimate the true risk of lymphatic and hematopoietic malignancies associated with benzene exposure, the 25% of the cohort for whom vital status was not determined were assumed to be alive. Little or no quantitative exposure data existed for these plants.

Causes of death were determined from death certificates, and person-years at risk were determined by a modified life-table method. Person-years of observation and causes of death were determined from January 1, 1950 to December 31, 1975. Two control populations were used to generate the numbers of expected deaths in the study. The first comprised the U.S. white male population, while the second was white males employed in an Ohio fibrous glass production facility during the 1940's and who had achieved five years of employment by June 1, 1972.

The most striking finding was the observation of a statistically significant (p less than 0.002) five-fold increased risk of dying of leukemia compared to the U.S. male rates (7 deaths observed vs. 1.38 deaths expected, p less than 0.002), as well as to the fibrous glass workers (7 deaths ob-

served, 1.48 deaths expected, p less than 0.002).

Criticisms of various aspects of this study were raised by participants to the rulemaking. The issue of what level of benzene the workers in the Infante et al. cohort were exposed to was the most discussed area. Participants criticized the information available in the Infante study. The study referred to a November 1946 report of the Industrial Commission of Ohio which indicated that: "Tests were made with benzol detectors and the results indicate that concentrations have been reduced to a safe level, and in most instances range from 0 to 10 or 15 parts per million." Comments at the hearing demonstrated that there were area exposures during this study period exceeding these levels, at times reaching values of hundreds of parts per million. Since no personal monitoring data are available, any conclusion regarding the actual individual time-weighted average exposure is speculative. Because of the lack of definitive exposure data, OSHA cannot derive any conclusions linking the excess leukemia risk observed with any specific exposure level.

The study was also criticized for combining the two separate plants in the same analysis. It was suggested that an independent analysis of the two plants would produce different results, thereby suggesting that factors other than similar exposure to a single agent (benzene) contribute to the excess leukemia. (Lamm, Tr. 2538). OSHA believes that the use of non-age-adjusted leukemia death rates, as utilized in Lamm's analysis, is inappropriate for the assessment of an event associated with age. Therefore, OSHA believes that this criticism is unsupported on this basis. Moreover, the cohorts were combined based on the similarity of the processes in the two plants (Tr. 842). Also, because of the small number of subjects in the study cohort, the authors stated that it would be inappropriate to analyze the data separately for the two plants. (Infante, Tr. 935, 796-97).

A question has been raised by industry participants as to the validity of excluding the "dry side" (Pliofilm finishing) workers from the study cohort (Lamm, Tr. 2638-29; API, PC 33, p. 42-43). As explained by one of the authors, these workers were never intended for inclusion in the cohort following discussion with company personnel indicating there was no benzene exposure on the dry side (Infante, Tr. 929-30). Testimony was also offered that if "dry side" employees had job operations which kept them predominantly on the wet side of the plant, then those employees were included in the cohort (Tr. 931). Limited data subsequently released by the University of North Carolina at the

OSHA hearing indicated that there may have been some benzene exposure (0, 11.8 20 ppm) on the "dry side". However, there were only 3 sample points and no details were given as to sampling locations, duration of sampling, or definition of departments, to permit interpretation of this information (Ex. 187B.6, Table 3, p. 10). Infante testified that a cursory examination of "dry side" workers revealed no leukemias. However, Infante stated, "... there really are not enough people who are employed on the dry side who never went into the wet side to make a meaningful conclusion about that (leukemia deaths from exposure among workers on the dry side)" (Tr. 930). Based upon the above considerations, it appears that the "dry side" workers should not have been included as was the case.

A question was raised as to whether the study demonstrated the true risk of leukemia among workers exposed to benzene (Tr. 311). Sakol referenced two cases of leukemia at the same plant which he personally diagnosed, which were not so certified on death certificates. He cited these cases in support of the substantial underascertainment of leukemia mortality in the study of Infante et al., due to their sole reliance on death certificates.

The use of the Connecticut Tumor Registry data to determine the expected number of type-specific leukemia deaths for the Infante cohort was criticized. Jandl calculates that the tenfold excess risk of myelogenous and monocytic leukemia found by Infante et al. may have been off by at most a factor of two. (ORC/Jandl, PC 34, p. 77). (Also, there is a counterbalancing underestimate of the risk because at the time of the report, only 75 percent followup had been completed and the remaining 20 percent of the study population were all regarded in the statistics as being alive at the end of the study period. Both the strengths and weaknesses of the Infante et al. study have been carefully evaluated by this Agency. OSHA believes this study is one of the more definitive investigations in the benzene literature and provides additional evidence supportive of earlier studies which implicate benzene exposure and the subsequent development of leukemia.

An opposite result was obtained in a Tabershaw-Cooper Associates Inc. mortality study of petroleum refinery workers (Ex. 2-5a). The study population was a sample of workers from the 251 U.S. refineries operating in 1971. The authors attempted to select a sample of 17 U.S. refineries to give a representative distribution with respect to geographic area, ownership, and size. Hourly workers with more than one year of work experience between January 1, 1962, and December

31, 1971, were studied. All workers were classified as to their potential hydrocarbon exposure. The authors reported that better than 94% follow-up was achieved. An excess mortality from lymphoma was observed although it did not achieve statistical significance.

Subsequently, the study was expanded to include 5,145 workers who had been hired on or before 1943 and who were working sometime during January 1, 1962, through December 31, 1971. No excess mortality from leukemia or lymphomas was observed in this subpopulation having 20 or more years since first hydrocarbon exposure. Gaffey, one of the authors of the study, stated that the study had been commissioned not specifically to study the effects of benzene, and in fact he could not delineate what proportion of the study population had ever been exposed to benzene (Tr. 1343-1344). Moreover, as adduced during the hearing, Gaffey acknowledged that there was no industrial hygiene assessment of the work environment (Tr. 1251) to provide the basis for identifying which workers may have been exposed to benzene.

Because this study was designed to assess potential effects of "hydrocarbon" and not benzene exposure and since no group of workers exposed to benzene was clearly identified, this study provides no relevant information as to the leukemogenic risk of exposure to benzene. Therefore, OSHA does not view this study as providing negative proof that benzene does not cause leukemia.

Dow submitted a study which addressed the incidence and mortality of leukemia among benzene-exposed workers (Ex. 154). The mortality experience for all employees occupationally exposed to benzene from 1940 to 1973 was studied. Expected deaths were calculated using age-cause-specific mortality rates for the corresponding U.S. white male population from 1942 to 1972. Each of the 594 workers were classified in approximate benzene exposure categories. A rough cumulative dosage was calculated. When consideration was given to the incidence of myelocytic leukemia, the authors concluded that a statistically significant excess was demonstrated (3 deaths observed vs. 0.8 expected, p less than 0.05) (Ex. 154, p. 12). Mortality data were analyzed by production areas and according to cumulative dosage and length of occupational exposure. Those people in the cohort who had exposures to known carcinogens were excluded from analyses dealing with dose-response in relation to benzene exposure.

An increase in leukemia incidence was observed in the population where 2 deaths were observed vs. 1.0 expected. An additional death resulting from

myelogenous leukemia was identified among the study cohort subsequent to the earlier published report. Based upon their findings the authors stated that:

In these cases, varied work histories, low levels of potential benzene exposure relative to other employees in the cohort, and the lack of information in regard to total medical history made a retrospective assessment of the possible relationship to benzene exposure very judgmental. (Ott, Ex. 154, p. 12.)

However, based upon the recent finding of the third death due to leukemia, Dow lowered its internal ceiling limit from 25 ppm to 10 ppm (Ex. 82).

In addition to the 3 deaths reported due to leukemia, 2 deaths attributable to non-malignant blood disorders were also reported: aplastic anemia and pernicious anemia. (OH, Ex. 156, p. 9.) Deaths attributed to aplastic anemia without examination of bone marrow aspirates, may in actuality, be due to leukemia (Vigliani Ex. 2-15, p. 123), thereby potentially resulting in an underestimation of leukemia risk among the benzene-exposed cohort.

OSHA recognizes that the decedents were for the most part exposed to relatively low concentrations of benzene, and no leukemia deaths occurred in the higher exposure groups. However, because of the small population size as well as the possibility of sensitivity of those individuals developing leukemia, it cannot be concluded that these deaths are not caused by benzene exposure.

OSHA does conclude that the findings of this study are consistent with the findings of many studies that there is an excess leukemia risk among benzene exposed employees.

Allied Chemical Corp. submitted a post-hearing comment containing mortality data for employees with potential benzene exposure (P.C. 22). Death certificates were obtained for all workers dying between 1961 and mid-1977. Rough exposure information was derived by back extrapolation, limited exposure data, and subjective reports of employees regarding signs and symptoms. Based on these estimates of benzene exposure, there was no observed cluster of leukemia in operations having benzene exposure. Because this study was presented to OSHA after the hearing closed, more specific details concerning the estimate of exposure, the method utilized for obtaining estimates of person-years at risk, or how the death certificates were coded were not obtained.

In 1974, Thorpe reported that the incidence of leukemia, among a population of 38,000 workers exposed to low levels of benzene over a ten year period (1962-1972), was not statistically different from that expected on the basis of the general population (Ex. 2-34). However, the study has been criti-

cized for the relaxed casefinding techniques and analytical methods (Brown, Ex. 2A-35). Thorpe himself acknowledged the following serious methodologic deficiencies:

1. Validity of leukemic diagnoses.
2. Quantitative determination of exposure levels.
3. Adequacy of retiree follow-up.
4. Complete occupational histories.

As in the case of the Tabershaw/Cooper study, OSHA cannot separate the benzene-exposed workers from those with little or no exposure. This difficulty, compounded by the 4 deficiencies listed above, also precludes reliance upon the finding of the Thorpe study.

University of Pittsburgh investigators (Lloyd, Redmond, Ex. 113) have published a notable series of epidemiological studies of steelworkers mortality. AISI (P.C. 36, pp. 59-60) cited the above studies as evidence of no leukemia risk among benzene-exposed coke oven workers. Most notably, the industry cited the fact that byproduct plant coke oven workers were not found to have been at excess risk (P.C. 36, p. 60) and recommended that coke ovens be excluded from the benzene standard (P.C. 36, p. 100).

However, as Bickmore stated:

*** In all 35, the expected, the incident (SIC) of mortality and expectation is so low as to preclude any meaningful statistical calculations by the professionals that made the study. (Tr. 3314)

These coke oven worker studies were designed to assess worker risk of exposure to coke oven emissions (Ex. 113 p. 1) (P.C. 27C p. 1, P.C. 27D p. 1). Given the small numbers of observed and expected rates of leukemia, and in the absence of a study designed to assess coke oven worker exposure to benzene, OSHA believes it inappropriate to rely on these studies as evidence that there is not a leukemia risk of exposure to benzene.

During the hearing, Stallones discussed the unpublished study of 3,600 Shell Oil Company workers with "potential" benzene exposure (Ex. 115C.2). Among this population he testified that he observed no excessive leukemia mortality in the three year period ending in 1976. Stallones could not determine how many workers were exposed to benzene. In fact, clerks and officer workers were included in the study group. Again, failure to correctly identify or define a benzene-exposed cohort limits the usefulness of this study.

A series of published and unpublished epidemiologic studies investigating the mortality experience of rubber workers have been entered into the hearing record. (McMichaels et al. Ex. 2-36, -37, 2B-295); Monsan and Nakano (Ex. 2-83); Fox et al. (Ex. 2-61); Andjelkovic (Ex. 2-54); Occupa-

tional Health Studies Group, UNC (Ex. 187B). These studies have, in general, shown excess of lymphoma and leukemia among rubber workers. The leukemia was predominantly lymphatic, a cell type not commonly associated with benzene. The proportion of rubber workers actually exposed to benzene in these studies is undetermined. The presence of other chemical exposures raises the question of an alternative causative agent for the excess of lymphatic leukemia and lymphoma observed among rubber workers. In view of these considerations, these studies provide no additional evidence for the leukemogenic potential of benzene.

There has been discussion whether benzene is a *primary carcinogen* (can directly effect a neoplastic alteration without host-mediated activation); a *secondary carcinogen* (chemicals which may increase susceptibility of cells, to a primary carcinogen); a *procarcinogen* (requires biochemical alteration prior to effect); or a *co-carcinogen* (which requires the interaction of another chemical to elicit a neoplastic response). (Olson, Tr. 2892; NRC, Ex. 2-4, p. ii; API/NPRA Brief, P.C. 33, p. 86-87; Aksoy, Tr. 177; Furst, Tr. 1744; Stockinger, P.C. 32-H, 53; Weisburger, P.C. 32-I; Tabershaw Tr. 2549, 2545). The evidence is, at present, insufficient to choose among these alternatives. Namely, what is apparent, however, is the effect of benzene exposure—a significantly increased risk of death from leukemia.

Types of leukemia clearly associated with benzene exposure include acute myelogenous leukemia (AML) and its variants. For example, Aksoy testified that among 40 cases of leukemia among benzene-exposed workers in Turkey, AML and its variants were the most frequently observed form (Ex. 60, p. 7). In the experience of Vigliani and his coworkers, only acute or subacute myelogenous leukemias were observed (Ex. 2-49). The predominant cell type found by Infante (Ex. 2A-271) and others were also myelogenous in character. This well-established association between benzene and AML is in concert with the well-known toxic effects of benzene on bone marrow stem cells (Goldstein, Ex. 43B, p. 162).

In contrast to the definitive relationship between benzene and the induction of AML and its variants, there is considerable scientific debate concerning the association between benzene exposure and the development of chronic forms of leukemia (CLL and ML). Jandl has stated that ".... lymphoid leukemia is not a feature of benzene toxicity." (ORC/Jandl, P.C. 34, p. 59), and Lamm ruled out chronic leukemia, not as a "possibility", but as a "probability" (Tr. 2558). Aksoy found no cases of CML among the workers he studied. (Ex. 60, p. 6-F),

and no cases of CLL were seen by the Italian investigators. A different result has been reported by several French studies which have reported a relatively high incidence of CLL. In some instances, there were more cases of CLL than AML. They also report a higher incidence of CML than would be expected based on Aksoy's and Vigliani's findings. Supporting the high incidence of CLL in the French studies is the report by Tarreel which describes 16 cases of leukemia which resulted from long-term exposure to benzene, 3 diagnosed as CLL (Ex. 2-28).

The evidence is inconclusive as to the relationship between benzene exposure and the development of forms of leukemia other than AML and its variants. Vigliani stated (1976) that, although he did not observe chronic leukemias in his series, "there is no *a priori* reason for not accepting them as benzene-induced leukemias * * *" (Ex. 2-49, p. 148). OSHA believes at this time that it is prudent to recognize the possibility that benzene exposure may be related to chronic forms of leukemia.

One of the major issues of this rule-making is whether a blood disorder is a necessary precursor for the subsequent development of leukemia. For example, in 1974 NIOSH speculated as follows:

It can be postulated that bone marrow changes and blood dyscrasias would precede leukemia if induced by benzene, so that if these changes were prevented leukemia should not result (Ex. 32B).

Aksoy has testified that benzene leukemias usually develop after a previous pancytopenic period. (Tr. 198) Maugeri, reports that, "the leukemias in our cases were always of the acute, aleukemic slow developing type, and they were always preceded by [an] aplastic condition" (Ex. 39-10, p. 2). Snyder remarked that he was unaware of benzene leukemias without previous demonstration of some kind of bone marrow damage (Tr. 3226) and Goldstein has noted that, "there does not appear to be any proven cases of leukemia in the absence of previous pancytopenia" (Ex. 43B, p. 165). But Goldstein cautions that this interpretation is, "open to speculation, especially in view of the paucity of routine laboratory data preceding the onset of leukemia" (Ex. 43B, p. 165).

As observed by Goldstein, since the mechanism by which benzene induces leukemia has not been elucidated, it is possible that leukemia develops, not in response to the pancytopenic effects of benzene, but rather to the direct carcinogenic effect on the marrow hematopoietic stem cells not necessarily accompanied by any other evidence of marrow effect (Ex. 75, p. 3). In such events, protection against non-neoplastic blood disorders would not rule out subsequent development of leukemia.

Vigliani, in discussing the evidence causally relating leukemia to benzene exposure observed that such leukemia may occur, ".... directly or following aplastic changes in the bone marrow * * *" (Ex. 2-49, p. 148). In response to a question concerning whether aplastic anemia is a necessary precursor for leukemia, Lamm responded in the negative (Tr. 2562). Also, Browning in 1965 observed that, "benzene leukemia is frequently superimposed upon a condition of aplastic anemia, but it can develop without a preceding peripheral blood picture characteristic of bone marrow aplasia (emphasis added)" (Ex. 2-31).

Finally another industry participant was reluctant to conclude that cytopenias "always" precede leukemia (Tabershaw, Tr. 2546). The evidence is not conclusive. There has been no scientific study of leukemia and preceding pancytopenia resulting from low levels of benzene exposure. The current lack of a reproducible benzene leukemia animal model forecloses the use of experimental evidence. There is no agreement on prospective criteria for benzene-induced blood abnormalities. Therefore, the statement that non-malignant pathological changes always precede leukemia is essentially based on retrospective analysis. The fact that non-malignant blood changes may occur shortly (within a few months) after first exposure to benzene, while leukemia may appear as long as 10 years or more after initial exposure suggests that separate etiologic pathways may be involved.

A corollary issue related to preceding blood disorders is whether recovery from such abnormalities eliminates the risk of leukemia deaths attributable to benzene exposure. Rosen has stated that: "[w]hether reversing the early toxicity can prevent the development of more serious blood dyscrasias in some cases is open to question, but it is a definite possibility" (Ex. P.C. 26A, p. 4).

Jandl has written: "In carefully studying other reports of long latent periods, or of any period between an initial aplasia and a terminal leukemia in which the patient was hematologically normal, I failed to find any well-documented example of complete recovery followed years later (despite abstinence from benzene exposure) by acute myelogenous leukemia" (ORC/Jandl, P.C. 34, p. 24).

Because of the lack of information with a suitably identified cohort followed for a sufficient number of years, it is impossible to make a determination whether or not these "recovered" workers are actually at increased risk of dying of leukemia. This uncertainty has been expressed in the conclusions in the Dow Chemical Company morbidity studies:

The question that remains unanswered, because of the relatively small sample size

of this study, is what is the probability that serious effects of benzene (such as leukemia) will appear years after first exposure and after a period of health surveillance during which no hematological abnormalities are noted (Dow/Fishbeck, Ex. 154, p. 19).

OSHA agrees with the caveat expressed by Dow, and therefore the benzene regulation is not predicated on reversal of blood abnormalities protecting against the development of leukemia.

Benzene-associated leukemia is frequently characterized by a long delay between initial exposure and the onset of disease. Sellyei and Kelemen report a case of subacute granulocytic leukemia in a patient 8½ years after starting to work with benzene (Ex. 2B-258). Hernberg reported a case of a 10-year period between initial exposure and the onset of leukemia in a woman with normal interval blood counts who was exposed to benzene for a total of 6 months (Ex. 217-152). In 1974, a case of acute leukemia was observed in a woman who, following a benzene-induced anemia, was reported to have an exposure-free period of 14 years with almost normal blood counts (Vigliani and Saita, Ex. 2-50, p. 214). Infante et al. report a range of 2-21 years between initial exposure and death; all but one exceeded 10 years (Ex. 2A-272). Goldstein hypothesizes that if benzene-induced hematologic damage is expressed by an * * *

aberration in the bone marrow producing a stem cell that is liable to a further mutagenic event, such an event could conceivably occur many years after the original insult. (Ex. 43B, p. 166).

The delay in the expression of overt disease is a characteristic of many other carcinogenic compounds. With regard to benzene, it has been documented that there is a relatively rapid decline in the incidence of leukemias following cessation of worker exposure to benzene. Aksoy has testified that after the substitution of other solvents for benzene, there has been a decline in the annual number of workers diagnosed with benzene-leukemia (Ex. 60, p. 3). Vigliani and Forni reported that there was a sharp decrease in cases of chronic benzene poisoning after the use of benzene as a solvent was banned (Ex. 2-50, p. 214). These observations appear to be paradoxical in light of the latency periods also reported. However, Forni and Vigliani have noted that, occasional cases of acute leukemia with a long latency period may still be observed (Ex. 2-50, p. 215) and Aksoy, while reporting that no additional cases of leukemia among shoeworkers were diagnosed in 1976, noted that this did not preclude the development of additional cases in the future (Tr. 169).^{*} The question of la-

tency periods for benzene-induced leukemias has not been resolved and requires further investigation.

Another area of discussion is the question of identifying individuals who may be particularly sensitive to the hematotoxic effects (including the development of leukemia) of benzene. Several witnesses including industry participants generally expressed the view that there probably were differences in sensitivity (Sokol Tr. 228; Shaw Tr. 412; Snyder Ex. 54.2, p. 25; Thorpe, Eckard Tr. 2052; Furst Tr. 1791-42). It appears from the evidence that there are individuals in given populations who may, because of genetic factors and/or concurrent or prior exposure to other environmental agents, be especially sensitive to benzene-induced blood disorders.

Aksoy and his colleagues reported a possible familial link in benzene-induced leukemias in 5 of 40 workers indicating a possible genetic predisposition to benzene's harmful effects (Ex. 60, pp. 8-10). Also, Jandl on the basis of tentative data has attempted to identify a subpopulation with risk factors predisposing to increased sensitivity to benzene (ORC/Jandl, PC 34, pp. 43-44). These include:

- Those between the ages of 16 and 30;
- Those with prior exposure to benzene or exposed to radiation in excess of that required for diagnostic purposes, and;
- Those with evidence of a history of other less severe myeloproliferative disorders such as remitted aplastic anemia, certain abnormal circulating blood cells, or those with persistent abnormalities in one or more blood cell types.

Other predisposing factors may include exposure to drugs or alcohol which may act to modify the metabolism of benzene. These postulated effects are not consistently observed or universally accepted by investigators. In his testimony, Shaw stated that there was no way to determine who is susceptible to benzene and who is not (Tr. 420). And despite "well substantiated information" concerning the increased sensitivity of certain groups to benzene, the International Workshop was unable to develop and provide specific guidelines on this matter (Ex. 17, p. 7). These sensitive individuals, interspersed among the working population, are certainly among those who are at highest risk of material impairment from benzene exposure. The size of this group is unknown. It is the purpose of this regulation (especially the permissible exposure level and detailed medical surveillance protocol) to not only minimize harmful effects of benzene exposure, but also provide early diagnosis and treatment should such effects occur.

c. *Animal studies.* The wide variety of non-malignant hematological disorders observed in humans exposed to benzene which range from simple anemia, and leukopenia to aplastic anemia have been experimentally induced in animals. However, attempts to demonstrate the development of leukemia in animals exposed to benzene has met with less success. Until recently, a study by Lignac in 1932 was the only animal study known to OSHA in which leukemia has been observed in animals exposed to benzene. (Ex. 2-38). Fifty-four mice (28 females; 26 males) were given subcutaneous injections of benzene (0.001 ml in 0.1 ml of olive oil) for 17 to 21 weeks. Nine mice were initially excluded following intercurrent infection and an additional 12 were lost through atrophy of various organs, especially the spleen. Lignac attributed these 12 deaths to the size to the dose of benzene. Eight of the remaining 44 mice developed leukemia or Kundrat's lymphosarcoma and died 4 to 11 months after receiving the first injection. The absence of concurrent controls makes interpretation of the results problematic and uncertain. Failure to identify the mouse strain studied has frustrated efforts to independently confirm the findings.

Other studies have failed to reproduce Lignac's results. Amiel in 1960 utilized four inbred strains of mice and subjected them to the same experimental program outlined in Lignac's study. (Ex. 2-39). No leukemic or aplastic hemopathies were observed. Ward et al. administered benzene subcutaneously to a strain of mice which is known to be responsive to leukemogenic agents. (Ex. 2-40). A slight increase in the percentage of granulocytic leukemias was observed in the benzene-treated mice as compared with the controls; however, the authors viewed the increase as not statistically significant.

In a letter transmitted Aug. 9, 1977 to Eula Bingham, Asst. Secretary of Labor, Nelson described preliminary results of an inhalation experiment using rats and mice (Ex. 178). Animals were exposed to benzene vapors 6 hours per day, 5 days per week for up to 2 years. Two possible leukemias were observed in a group of 40 strain CD mice exposed to 300 ppm. In one animal, elevated WBC counts were observed 193 days after exposure, with death following 3 days later. The autopsy findings were consistent with CML, a disease not known to arise spontaneously in this strain. The second mouse exhibited the presence of abnormal blast forms in the peripheral blood after 211 days of exposure and died 4 days later. Whether this finding indicates AML, a disease previously observed in this strain, or acute lymphoblastic or stem cell leukemia (spontaneous incidence about 4 per-

^{*}A short latency resulting from high exposures is another possible explanation.

cent) had not been resolved at the time the report was submitted.

One of the 40 rats exposed to 100 ppm benzene developed an elevated WBC count after 240 days of exposure with the cell counts continuing to increase slowly. Peripheral blood smears showed some immature neutrophils. This finding is compatible with a diagnosis of CML, a disorder which is relatively rare for the rat. However, a non-leukemic leukemoid process could not be excluded.

Nelson characterized the results of the study as:

*** slender evidence of the production leukemia. Nevertheless, despite the shakiness, we believe these results to be extremely suggestive and provide an urgent basis for intensive further study (Ex. 178).

D. Conclusions. Leukemia is a serious world-wide problem. In this country alone, approximately 20,000 adults die annually from this disease, and about 12,000 individuals develop and die from AML each year (ORC/Jandl, P.C. 34, p. 72). However, based on the published literature the number of AML deaths attributable to benzene exposure is unknown. In this regard, Goldstein states: "The incidence of leukemia appears to be a small fraction of all benzene-induced hematotoxicity." (Ex. 54.B, p. 160). One reasonably complete 9 year follow-up study of 147 workers exposed to benzene, of which 109 displayed some degree of cytopenia, 1 case of leukemia was observed (Hernberg et al., Ex. 2-252). Dr. Jandl observes that, "... few patients with proven cases of acute myelogenous leukemia can be discovered in the American literature in the past 10 years * * *." However, the unusual number of erythroleukemias observed by Sakol at the Akron Pliofilm operation (Sakol, Ex. 61) indicates that there may be a severe underreporting of benzene-induced leukemias. Also, the relationship between initial leukemia and exposure to benzene may be less apparent than the benzene-induced cytopenias due to the substantial delay between exposure and manifestation of symptoms (Goldstein, Ex. 43.B, p. 160). Moreover, in many such instances the victim may be unaware of earlier exposure.

When case reports are derived from patients who are sufficiently sick to seek medical attention, the relative prevalence of leukemia is reported to be much higher. For example, in the 1976 report by Vigliani and Forni in which a total of 83 compensation cases of benzene toxicity were observed, leukemia accounted for 19 (Ex. 2-15).

Vigliani has estimated based upon available literature, that the number of cases of leukemia attributed to benzene exposure is "at least 150" (Ex. 2-49, p. 144). The document, "Benzene in the Work Environment", used to establish the German Occupational

Standard, summarized over 250 reported cases of leukemia in individuals who had been chronically exposed to benzene. (Ex. 2-58). Jandl states there have been at least 250 cases of AML in the United States which are believed to be the result of exposure to benzene. (ORC/Jandl, PC 34, p. 103). It is impossible to extrapolate these published findings to either an absolute total or a relative incidence. Beyond the likely underreporting of cases, the incidence of benzene leukemia may be greater than previously recognized since many diagnoses were made without results of marrow aspirates. Thus, peripheral pancytopenia may have been inaccurately labelled aplastic anemia when marrow examination might well have revealed acute myeloblastic leukemia, leukopenic or aleukemic leukemia, a type characterized by a decline in circulating white cells. (Vigliani, Ex. 2-49, pp. 143-4).

The evidence in the record conclusively establishes that benzene is a human carcinogen. The determination of benzene's leukemogenicity is derived from the evaluation of all the evidence in totality and is not based on any one particular study. OSHA recognizes, as indicated above that individual reports vary considerably in quality, and that some investigations have significant methodological deficiencies. While recognizing the strengths and weaknesses in individual studies, OSHA nevertheless concludes that the benzene record as a whole clearly establishes a causal relationship between benzene and leukemia.

The evidence indicating that relationship has been expanding and the international scientific community has increasingly acknowledged that worker exposure to benzene is associated with an increased risk for the induction of leukemia, in fact, today there is little dispute that benzene is a human leukemogen.

For example, in 1976 NIOSH stated:

NIOSH considers the accumulated evidence from clinical as well as epidemiologic data to be conclusive at this time that benzene is leukemogenic. Because it causes progressive, malignant disease of the blood-forming organs, NIOSH recommends, that for regulatory purposes, benzene be considered carcinogenic in man (Ex. 2-5).

In a paper presented at the International Workshop, Brair wrote that:

It is now generally recognized that benzene leukemia is a nosological entity. (Ex. 34-5, p. 4).

Vigliani has observed:

[F]rom the vast literature accumulating over the last forty years, the conclusion can be drawn that the clinical as well as epidemiological data are indicative of a strong leukemogenic action in man * * * (Ex. 2-49, p. 148).

Aksoy testified that:

[T]here is overwhelming scientific evidence that benzene can cause leukemia in man (Tr-144).

Other witnesses and commentators were in basic agreement with this conclusion: (Goldstein, TR-351, 389; Sakol, TR-316; Jandl, P. C. 26B. Addendum V, P. V, Tabershaw Tr 2545).

In 1971, the Senate of the Deutsche Forschungsgemeinschaft for the Examination of Hazardous Industrial Materials indicted benzene as a human carcinogen (See NIOSH Ex. 84A, p. 1). Two years later, Eckardt, then Medical Director of Exxon Corp., stated,

[t]he accumulated evidence in the literature leads to the inevitable [sic] conclusion that benzene is a leukemogenic agent, particularly in cases that have previously displayed a panmyelopathy. Although this had long been suspected, the data reported in the literature was not sufficiently convincing to establish the leukemogenic nature of benzene. However, the more recent observations seem to establish the association beyond a doubt (Ex. 84, B.2., p. 7).

Industry participants in the benzene rule-making did not, for the most part, challenge benzene's leukemogenicity. Rather, they argued that there is a threshold level for benzene and that, consequently, benzene is not a leukemogen at low levels. In support of this argument, industry cited several epidemiological studies purporting to demonstrate that an excess risk of leukemia is not seen in workers exposed to benzene at levels lower than 10 ppm. Although the epidemiological method can provide strong evidence of a causal relationship between exposure and disease in the case of positive findings, it is by its very nature relatively crude and an insensitive measure. In the case of negative findings, the results are especially difficult to interpret for several reasons. One methodological artifact commonly observed is the failure to adequately define the composition of the study cohort. The fundamental premise of any epidemiological investigation of the potential relationship of occupational exposure to an agent and observed health effects is, in OSHA's view, a careful definition of an exposed cohort. As was pointed out above, many of the benzene studies cited by industry suffer from this design defect. Other factors, such as incomplete followup of workers who may exit the cohort and uncertainly as to the actual cause of death lead to further dilution of the reported results. The presence of a latency period exacerbates this problem: The long delay between exposure and manifestation of symptoms, compounded by the high mobility of our society make it medically and scientifically extremely difficult to identify workplace carcinogens. An additional difficulty arises from the apparent variability in individual sensitivity. Epidemiological study populations tend to be small and reaction to an etiological agent may not appear in the cohort, due to varying degrees of sensitivity. On the other

hand, positive retrospective investigations suffer from these artifacts to a much lesser degree. For these reasons, it is OSHA's policy when evaluating negative studies, to hold them to higher standards of methodological accuracy.

As stated above, the positive studies on benzene demonstrate the causal relationship of benzene to the induction of leukemia. Although these studies, for the most part involve high exposure levels, it is OSHA's view that once the carcinogenicity of a substance has been established qualitatively, any exposure must be considered to be attended by risk when considering any given population. OSHA therefore believes that occupational exposure to benzene at low levels poses a carcinogenic risk to workers. The Agency, however, recognizes that not all individuals exposed to benzene will suffer harmful effects. The benzene record establishes that there may be individual effect levels. However, there is no way of ascertaining which workers in any exposed population are susceptible and to what levels.

OSHA further recognizes that determinations of carcinogenicity are normally based on animal studies, and when available, human evidence. OSHA acknowledges that, at the present time, there is no unequivocal animal model demonstrating the induction of leukemia. However, the lack of an animal model does not diminish the conclusive nature of human evidence demonstrating benzene's leukemogenicity.

OSHA acknowledges that there are many unresolved issues concerning the relationship between benzene exposure and leukemia:

Whether benzene is a co-carcinogen, a procarcinogen, etc.

Whether benzene exposure is causally related to induction of forms of leukemia other than AML and its variants.

Whether blood dyscrasias, such as aplastic anemia always precede benzene leukemia.

To what extent are leukemia deaths attributable to occupational exposure to benzene.

What factors identify a sensitive population.

These questions are on the frontier of scientific and medical knowledge and, given the mandate of the Act, OSHA cannot wait for answers while workers are exposed to this life-threatening substance. There is no doubt that benzene is a carcinogen and must, for the protection and safety of workers, be regulated as such. Given the inability to demonstrate a threshold or establish a safe level, it is appropriate that OSHA prescribe that the permissible exposure to benzene be reduced to the lowest level feasible.

4. *Chromosome studies.* OSHA has examined both the original literature of benzene-induced chromosomal

changes and the material contained in recent reviews of the subject (NRC Report, Ex. 2-4, section entitled: Chromosome Effects; Forni, Ex. 156.H and; Wolman, NYU Report Ex. 43.B, Chapter VI). Evidence derived from human studies together with similar results obtained from experimental investigation clearly demonstrates that benzene can induce visible damage to chromosomes in lymphocytes and blood-forming cells. For example, Tyröler noted that: "I think there is rather convincing evidence that the chromosomal aberrations are associated with exposure to benzene." (Tyröler, Tr. 3100; also see International Workshop, Ex. 17, p. 6). The effects may be manifested as numerical alterations and/or structural rearrangements of the chromosomal material and include additions or deletions of chromosomes, segments of whole chromosomes or chromosome sets, in addition to exchanges which result in morphologically aberrant chromosomes (Wolman, NYU Report, Ex. 43.B, p.—). Forni has observed that the aberrations produced by benzene exposure are non-specific and are similar to those produced by ionizing radiation. (Ex. 156.H). To what extent these events are detrimental to human health is not known.

a. HUMAN STUDIES

There are numerous reports on chromosomal evaluations in worker populations both with and without clinical symptomatology resulting from exposure. In general, these studies reveal that there are statistically significant increases in chromosomal damage in those occupationally exposed to benzene. The chromosome alterations have been classified as either unstable changes (i.e., fragments, dicentric, trisomic and ring chromosomes) and stable changes (i.e. abnormal monocentric chromosomes due to deletions, translocations, inversions and trisomies). Aneuploidy (abnormal chromosome number) and/or polyploidy (a multiple chromosomal set) have also been observed. The early reports focused on the examination of workers exhibiting benzene hemopathy (a disease of the blood). As early as 1964 Pollini and Columbi published such a study. (Ex. 2-17). Examination of cultured bone marrow cells and peripheral lymphocytes showed increased frequencies of aneuploid cells and structural aberrations. A second study by the same group (Ex. 2-4, reference 50) of 4 patients with temporary or progressive blood dyscrasias revealed that the incidence of heteroploid (abnormal number) chromosomal patterns ranged around 70% both in the blood and in the marrow of each subject. The authors were, however, unable to establish a correlation between the duration and degree of exposure and

either the frequency of chromosome aberration or the degree of toxicity. Other cytogenetic studies of subjects with benzene-related hemopathies have yielded similar findings (e.g. Forni and Moreo, Ex. 2-18 and 2-19; Sellyei and Keleman, Ex. 2A-258; Aksoy et al., Ex. 2-57; and Erdogan and Aksoy, Ex. 2A-192). Variables which make these case reports difficult to interpret and compare include: differential diagnoses, the use of lymphocytes artificially stimulated to grow in some cases and bone marrow cells in others; the occasional lack of "normal" baseline chromosomal breakage frequency; and the occurrence in some cases of pre-existing familial chromosomal aberrations (Wolman, Ex. 43-B, p. 129). In spite of the limitations of these reports, Wolman has stated that some trends have been observed—additional chromosomes have been identified in several reports, tetraploidy (4 sets of chromosomes) or polyploidy were seen in some cases and in many instances an increased frequency of chromosome breakage was reported but not well documented. Wolman states that:

the clearest picture of the relationship between benzene exposure and chromosomal changes emerges, not from experimental studies or reports of human disease, but from studies of occupationally exposed workers (Ex. 43.B, p. 130).

The National Research Council (Ex. 2-4) considers the 1969 study by Vigliani and Forni (Ex. 2-20) to be one of the most systematic of this type reported. The results of cytogenetic analysis of 25 subjects who had recovered from benzene hemopathy were compared to the findings of controls matched for sex and age. In most cases, increased ratios of both stable and unstable chromosome aberrations were still present several years after cessation of exposure to benzene and/or recovery from poisoning, whereas the hematological analysis revealed normal blood counts in most cases. Follow-up cytological analyses of these subjects showed an overall decrease in unstable changes, and generally, a persistence or an increase in stable alterations. Other cytogenetic surveys of workers industrially exposed to benzene are: (Forni et al., Ex. 2-20; Girard et al., Ex. 2-40; Hartwich and Schwanitz, Ex. 217-129; and Vigliani and Forni, Ex. 2-14).

OSHA is also aware of several cytogenetic studies of workers chronically exposed to airborne concentrations of benzene probably less than 25 ppm. Several indicate an increase in chromosomal damage (Hartwich and Schwanitz, Ex. 129; Girard et al., Ex. 2-65 or 2-283, and Berlin et al. Ex. 2A-218) while others present negative findings (Forni, Ex. 156.H; Tough et al., Ex. 2-21B, and Burgatti, Ex. 2A-226).

b. EXPERIMENTAL STUDIES

The quantity of data available from experimental studies is less than that reported for exposed workers, but it provides additional corroborative evidence that chromosomal aberrations can be induced by benzene. An *in vitro* study utilizing cultured human lymphocytes, incubated with benzene, revealed that the frequency of chromatid-type aberrations increased with increasing dosages of benzene. It was further observed that the yield of dicentric and ring chromosomes induced by benzene damage was synergistically related to treatment with radiation. A high incidence of chromosomal damage has also been observed in cultured human leukocytes and Hela cells incubated with benzene (Kozumi et al., Ex. 2B-298). In 1970, Philip and Jensen reported that rats acutely intoxicated with subcutaneous injections of benzene displayed increased rates of chromatid breakage in direct bone marrow preparations 12 and 24 hours after injection, followed by a return to normal cytogenetic findings at 36 hours (Ex. 2-23). It has also been reported that rabbits made pancytopenic by chronic exposure to benzene via injection exhibited a high frequency of both chromatid and chromosome aberrations, in uncultured bone marrow cells (Ex. 2-22). After reviewing the animal evidence, OSHA concurs with Wolman's following conclusion:

[T]hat although it appears that exposure times in different species can induce increases in chromosome aberrations, there is no clear evidence for a dose-dependent response to benzene exposure. (Ex. 43B).

c. DISCUSSION

While the record clearly demonstrates that benzene causes chromosomal aberrations, it is equally clear that there is no unanimity of opinion as to what the benzene-induced chromosome aberrations mean in terms of demonstrable health effects, especially the relationship of chromosome damage to the induction of leukemia. For example, the International Workshop concluded: "The implication of the finding of increased chromosome aberrations for the occurrence of benzene leukemia is still not clear." (Ex. 17, p. 6).

Whether these aberrations are, in some instances, (1) causally-related to the development of leukemia, or (2) are secondary to the neoplastic state and therefore are epiphenomena of metabolic alterations resulting from abnormal growth is not known (Sandberg, Ex. 2-102).

There are several theoretical considerations and some evidence supportive of the first alternative: Some investigators view chromosomal damage as a mutational event or an event which increases the probability of a mutation (e.g. Wolman, Ex. 43B, p. 126). As the

induction or the maintenance of a neoplastic (cancerous) transformation results most probably from a somatic mutation, damage to chromosomal material may enhance the opportunity for such a cellular change to occur. Other interrelated hypotheses in support of a causal relationship between chromosomal damage and leukemia are:

(1) That benzene might induce various types of chromosomal aberrations and that leukemia might evolve in those cases where a potential leukemia clone with a selective advantage develops in response to benzene exposure (Vigliani and Forni, Ex. 2-14).

(2) That cells exhibiting chromosomal instability or imbalance may be more susceptible to transformation by a leukemogenic virus (International Workshop, Ex. 17, p. 6) or;

(3) That chromosomal aberrations may lead to decreased immunological surveillance, and that in such instances, leukemia can develop if abnormal cell clones (some of which may be neoplastic) are not eliminated. In this context, Forni and Moreau reported a case of a benzene-induced leukemia in which both bone marrow and peripheral lymphocytes exed 47 chromosomes (1 more than normal) with the same karyotype, suggestive of clone formation. (Ex. 2-18).

There are also several investigators who believe that at this time, there is insufficient evidence to establish a causal link between visible chromosomal damage and leukemia (Ex. 156.2). For example, Snyder has stated that:

while exposure to benzene in sufficient concentration and for extended periods of time has been linked with both chromosomal aberrations and leukemia in humans, benzene-induced chromosome damage has been found in individuals who have not exhibited leukemia * * * (p. 22).

Additional evidence in favor of the non-causal relationship nature between chromosomal damage and leukemia was presented by Jandl. He observes that exposure to several types of agents, not known to possess leukemogenic action, induce chromosomal abnormalities which may persist for months.

Sandberg cautions that no consistent karyotypic pattern has emerged for any type of cancer or leukemia and in about half of all cases of acute leukemia, some cases of chronic myelogenous leukemia and in almost all cases of chronic lymphocytic leukemia, no visible chromosomal alterations occur (Ex. 2-102). And also, Elkins feels that the evidence fails to establish a causal link between chromosome alterations and leukemia (Ex. 156C, p. 22-23).

Whether these gross alterations of chromosomes can be viewed as toxic or mutational events depends on the fate of the affected cell. If the alteration in

the chromosomal material results in an inhibition of further cellular division, then in terms of its reproductive potential, the cell is dead and the damage inflicted may be classified as a toxic event. However, if the damage does not interfere with the reproductive ability of the cell, and the alteration is replicated, this may constitute a persistent gross mutation, " * * * a structural change in the genome which presumably alters cell function". (Wolman, Ex. 43B, p. 126.) In addition to structural and numerical alterations, benzene has been observed to induce chromosomal breaks:

While breaks may be repaired and are not necessarily mutational events (in the sense of being inherited), each occurrence increases the probability of a structural aberration and, therefore of a mutation (Wolman, Ex. 43B, chapter VI).

In viewing benzene as an agent potentially capable of interacting with the genetic material, several points should be made:

(1) All of the studies demonstrating benzene's "clastogenic" or chromosomal-damaging effect (Shaw, Ex. 2-94) have apparently reported the effects in somatic cells only. In view of the wide distribution of benzene in the body, it is not unreasonable, however, to assume that given somatic chromosomal damage resulting from benzene exposure, that germinal tissue may also be affected. In her review of clastogenic substances, Shaw has stated:

Because changes in the genes and chromosomes do not usually produce an immediate health hazard, they may go undetected for a lifetime or even for several generations. Yet, the human gene pool can become insidiously polluted. (Ex. 2-94, p. 409).

(2) Despite the considerable evidence demonstrating benzene's ability to inflict visible damage to chromosomes, benzene has not manifested mutagenic activity when tested in various microbial assay systems (Kraybill, Ex. 84. B 19, p. 314).

(3) The finding of gross chromosomal damage in bone marrow cells clearly demonstrates that despite competing detoxification reactions (see: Olson, Ex. 149, p. 12) benzene, or a reactive metabolite, is able to overwhelm protective defense mechanisms and enter the nucleus of hematopoietic cells.

In summary, the evidence clearly demonstrates that benzene is capable of causing significant increases in chromosomal aberrations in somatic blood cells in the absence of clinical and/or hematological symptomatology. It is also clear that for man, no quantitative dose-response relationship has been established for these effects. It is OSHA's interpretation of these findings that chromosomal damage represents an adverse biological event of serious concern which

may pose or reflect a potential health risk and as such, must be considered in the larger purview of adverse health effects associated with benzene.

V. ECONOMIC CONSIDERATIONS

In setting standards for toxic substances, the Secretary is required by section 6(b)(5) of the Act to give due regard to the question of feasibility. Section 6(b)(5) mandates that final standards be set which most adequately assure employee safety and health "to the extent feasible, on the basis of the best available evidence" and further requires that, in the development of occupational safety and health standards, "considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws." While the precise meaning of feasibility is not clear from the Act, it is OSHA's view that the term may include the economic ramifications of requirements imposed by standards. The determination that OSHA has the authority to consider economic feasibility factors in developing standards has been endorsed by the courts. *Industrial Union Dept., AFL-CIO v. Hodgson*, 499 F. 2d 467 (C.A.D.C., 1974); *AFL-CIO v. Brennan*, 530 F. 2d 109 (C.A. 3, 1975). As pointed out by the D.C. Circuit Court of Appeals, Congress did not intend the Secretary to promulgate standards which drive entire industries or large numbers of employers out of business. On the other hand, "standards may be economically feasible even though, from the standpoint of employers, they are financially burdensome and affect profit margins adversely; further, the Court said, the concept of economic feasibility does not "necessarily guarantee the continued existence of individual employers." *Industrial Union Dept., AFL-CIO v. Hodgson*, supra, at page 478.

In accordance with the Secretary's position, it has long been OSHA's practice to analyze the economic feasibility of proposed standards where significant economic impact on employers covered by the proposals seem likely, to make such analysis available to affected parties for comment and subsequent hearing prior to issuance of final rules, and to invite the submission of other information on the economic impact and feasibility of proposed standards. In developing a final standard, therefore, OSHA evaluates the economic feasibility of the final standard on the basis of the information developed by its own studies of the proposal and submissions by the public during rulemaking.

To assess the economic feasibility of the proposed standard for benzene, OSHA undertook an extensive study of the proposal's economic impact on

various affected industries. This study was conducted for OSHA by Arthur D. Little, Inc. (ADL). (Ex. 5A, 5B). The ADL study has provided basic economic data for the evaluation of the economic impact of the permanent benzene standard on the major affected industries. Additional information for this purpose was obtained through OSHA's analysis and consideration of all other economic data, comments, arguments and testimony submitted at the benzene hearing, in pre-hearing comments and in post-hearing comments and briefs. On the basis of the best available evidence, therefore, OSHA has determined, as explained in detail below, that the permanent benzene standard is economically feasible.

COMPLIANCE COSTS

Estimates of total costs of compliance with the permanent benzene standard for the major affected industries studies are as follows: First year operating costs for all industries combined are estimated by OSHA to be approximately in the range of \$187 million to \$205 million recurring annual costs are estimated at approximately \$34 million and investment in engineering controls is expected to be approximately \$266 million. Estimates of these costs for various individual industry sectors are analyzed below. As that analysis reveals, the greatest economic impact of the standard falls on the larger and more stable industries, such as petroleum refining and petrochemical production, which can readily absorb the costs or shift them forward to consumers. No testimony was offered by these industries that the proposed standard for benzene would imperil their existence. Even the higher projection of some costs by the American Petroleum Institute and other participants would not raise any serious question concerning the economic feasibility of the standard or the ability of the regulated industries to bear the additional costs.

The benzene standard, in its final form will require all industries that produce or use benzene, petrochemicals, products and services involving the use of solvents derived from petroleum, as well as production of crude and refined petroleum products, and primary distribution of gasoline, to undertake an initial determination of the extent to which their employees are exposed to benzene. The results of the initial exposure measurements will determine the types of activities each firm will be required to take to comply with the provisions of this standard. Where exposure measurements are below the action level (0.5 ppm), firms will have to provide information and training in the hazards related to benzene to their employees, comply with the labelling requirements, and retain the records of initial measurements.

These compliance activities account for the entire first year operating costs for many of these industries. Firms with exposure levels above the action level will incur additional first year costs for monitoring and medical examination programs. Finally, those firms with exposure levels above the permissible exposure level will have additional first year costs for installation of appropriate engineering and work practice controls, and for respirators. It is assumed that engineering controls are all installed in the first year and reduce exposure levels to below the permissible exposure limit. However, those firms with continuing exposure measurements above the action level will have recurring annual costs for monitoring and medical surveillance. Regardless of the airborne exposure measurements, employees in operations with potential exposure to eye or repeated skin contact will have to be provided with appropriate personal protective equipment. Thus, some firms and industries will have higher and more sustained cost burdens than others.

OSHA's estimates of costs for compliance with the final standard differ from estimates of the proposal's compliance costs in part because the standard in its final form differs from the proposal in areas which significantly impact on the cost of compliance. ADL estimated the proposal's compliance costs for 20 industry sectors engaged in benzene production (petroleum and coke), petroleum refining, chemical processing, benzene transportation, and other industries, such as rubber manufacturing and laboratories (ADL, Vol. 1, Ch 5). ADL provided detailed cost estimates for each industry and for each compliance activity required by the proposal. Total costs for all surveyed industries were estimated by ADL as follows: First year operating costs were approximately \$124 million, recurring annual costs were approximately \$74 million, and costs for implementation of engineering controls were approximately \$267 million. In developing each of these estimates, ADL used the control with the least cost as the basis of their calculations. In other words, where alternative methods of compliance are available to employers in an industry, and indeed may be more attractive to employers, the higher cost method was considered an optional process improvement, and only that portion of its total cost required to produce compliance was allocated to compliance with the proposed regulation (ADL, Vol 1, pp. 5-3). Additionally, ADL assumed compliance with the previous OSHA regulation (29 CFR 1910.1000, Table Z-2) requiring an exposure limit of 10 ppm TWA and a ceiling limit of 25 ppm, thus assessing to the benzene proposal only the incremental cost associated with

moving into compliance with the proposed permissible exposure level from the previous exposure limit.

The ADL costs covered 24,312 facilities and 196,875 estimated exposed employees (ADL, Ex. 5A, Table 5-1, p. 5-2). Costs were estimated for the required compliance activities of monitoring, medical surveillance, respirators, personal protective equipment, training, signs and labels, and record-keeping. Distribution of costs varied from sector to sector depending on such variables as the number of exposed workers who would require monitoring and medical surveillance and the estimated effectiveness of engineering and work practice controls. OSHA has examined the methods used by ADL to determine the costs for each provision of the standard and, in the absence of substantially contradictory testimony and alternative methods from affected industries, the approach of ADL has been largely adopted by OSHA in estimating the costs of compliance.

Based on all the evidence on the record, OSHA has estimated the cost of compliance with the benzene permanent standard for approximately 157,000 facilities and approximately 629,000 exposed employees.

MONITORING

As a basis for OSHA's estimates of compliance costs, OSHA has utilized for many industries ADL's sampling protocol for determining monitoring costs. ADL's protocol was designed to provide an initial exposure profile and characteristic sampling program.

ADL's representative explained that the protocol was intended to be representative, but that it might not fit each plant exactly and costs might be higher if the number of exposed workers in an industry, or those exposed above the permissible limit, were higher. (See Tr. 477-484, 522-526, and 592-595.) The derivation of the sampling base further explained in ADL's post-hearing submission as follows:

The vast majority of facilities which must comply with this regulation are typified by twenty-four hour per day continuous processes representative of petrochemical operations. It was proposed to initially sample 50 percent of all exposed employees. However, the three shift nature of these operations and the commonality between worker exposures by job category between shifts indicated that sampling results from one shift could be properly interpreted as being representative for all shifts. Therefore only 1/3 of the exposed workers should be sampled. Multiplying $\frac{1}{3} \times \frac{1}{2}$ equals $\frac{1}{6}$ of the exposed employees who must be monitored. (Post-Hearing 15E)

OSHA recognizes that these assumptions may not portray exactly the monitoring pattern of employers within other industries. It is OSHA's view, however, that the monitoring scheme as described is a reasonable

basis for estimating the cost of compliance with the monitoring requirements of the final standard.

In estimating the percentage of employees within each exposure category—i.e., above the permissible exposure level, between the action level and the permissible exposure limit, and below the action level, OSHA has used varying assumptions based on exposure data, where available. For the major portion of the covered industries, OSHA has accepted ADL's estimate that 20% of the exposed employees are above the permissible exposure limit. While there may be some variations in actual percentages at individual plants, industry witnesses offered no alternative approaches to estimating the number of exposed employees above the permissible exposure limit. Determination of the percentage of employees in each of the two exposure categories below the permissible exposure limit was based to the extent possible on record evidence of exposure. Where such evidence was not available, it was assumed for cost calculation purposes that one-half of the employees were exposed below the action level and one-half were exposed between the action level and the permissible exposure limit. Use of this distribution of exposed workers, however, does not imply that OSHA believes it necessarily represents actual exposure profiles for all industries; it has been used only to provide some basis for estimating approximate compliance costs and assessing the economic impact of the standard on these industries. OSHA has therefore, relied on the best available evidence as to likely exposure patterns in determining that its sampling protocol reflects typical industry conditions, provides a uniform estimation method enabling inter-industry comparisons to be made, and yields reasonable approximations of the cost impact of the monitoring program.

OSHA has utilized the ADL methodology for calculating monitoring costs. There are, however, significant differences in total monitoring costs as a result of changes in the monitoring requirements of the final standard. The elimination of the proposed percentage exemption expands the number of employers covered by the standard and the number of employees affected. Cost estimates for compliance by employers using liquid mixtures containing less than 1% benzene were not given in the ADL study. However, inclusion of an action level in the standard, below which no regular monitoring or medical surveillance is required, should minimize the economic impact of the permanent standard. This is especially true since the proposal would have lowered the percentage exclusion to 0.1% after one year, and would have imposed periodic monitoring and medi-

cal surveillance of employees in these operations with any amount of exposure to benzene. Furthermore, it is anticipated that a significant number of operations utilizing mixtures with less than 1% benzene will be below the action level, in which case only initial monitoring must be conducted.

The introduction of an action level decreases for individual employers the cost of compliance for the monitoring activities. The proposal required quarterly monitoring where exposures were at or below 1 ppm. The final standard requires initial measurement to determine exposures but requires no further monitoring where exposures are below 0.5 ppm (unless a re-determination of exposures is necessitated by specific changes). As a result of this change in the monitoring requirements, some employers, who would have been required to monitor employees quarterly, will now only need to conduct initial measurements. Initial measurements it is estimated will cost approximately \$109 million for all industries combined. However, the actual cost will be substantially below this, inasmuch as the standard allows employers who have conducted initial monitoring, pursuant to the benzene guidelines or the emergency temporary standard, to utilize those measurements in order to initially determine employee exposure; and the benzene record indicates that many employers have conducted these measurements.

MEDICAL SURVEILLANCE

The final standard, unlike the proposal, requires medical surveillance only of those employees whose exposure is at or above the action level. Moreover, the standard provides for twice yearly medical exams rather than quarterly exams. ADL has estimated the annual cost for routine medical surveillance as approximately \$207 per employee annually, (Vol. II, App. C). This figure included employer and employee time, physician charges and laboratory fees. (Vol. II, C-7).

Since routine medical surveillance is required by the permanent standard semi-annually rather than quarterly as contemplated by the proposal, OSHA has adjusted the ADL medical cost per employee to reflect the reduction in the number of periodic exams and to remove from the periodic exams the cost of the reticulocyte count and serum bilirubin, which the permanent standard requires only as part of the initial baseline exam. OSHA has, therefore, estimated the cost of the first year medical surveillance, including the work history, as approximately \$105.00 per employee and the recurring annual cost of medical surveillance is estimated as approximately \$78 per employee.

The final standard provides for medical surveillance in addition to semi-annual routine blood testing. Where routine medical surveillance reveals an abnormal blood picture, the employer is required to refer the employee to a hematologist. Where emergency situations occur, the employer is required to provide a urinary phenol test and, if urinary phenols are elevated, a repeat complete blood count (CBC); if the CBC reveals abnormalities then the employee must be examined by a hematologist. The cost of these non-routine examinations was not estimated by ADL since they would not have been required by the proposal. There is, of course, no certain way of determining the number of employees who will need examination by a hematologist. To calculate these additional costs, therefore, OSHA has assumed that 5% of all employees will have abnormal blood pictures and will be re-referred to a hematologist, and that the added cost will be \$100 per referral.

OTHER COSTS

Total costs for other compliance activities, such as engineering controls, respirators, training, and signs and labels have also been assessed. These costs are based essentially on the cost factors furnished by ADL since the ADL costs were generally accepted by industry participants.

Capital costs for engineering controls have been determined for industries with operations above the permissible exposure limit on the basis of the type of engineering controls available for the individual industry. Many of the industries covered by the benzene standard involve the storage and movement within a closed system of liquids containing benzene in various concentrations. Emissions occur at such points as pumps, pipe line joints, compressors, sampling points, and gauging stations. (Vol. I, 4-35). Engineering controls for these systems consists of replacing worn pumps and compressors with equipment specifically designed to minimize emissions, replacing gaskets to ensure tight fit of joints, welding joints, and the installation of automotive gauging and closed loop sampling devices. Specific units of these systems have been costed by ADL and aggregate costs shown below are based on an estimated number of these units which are required for a typical plant. To determine respirator costs, OSHA has used ADL's cost per employee for respirators. (Vol. II C-8, 9). For personal protective equipment, which is required by the standard for employees who may be exposed to eye or repeated dermal contact with benzene, the cost of \$13.16 per employee per year has been used. This cost includes the cost of gloves, apron, face-shield, and goggles (Vol. II, C-R).

Training costs, which include costs for preparation, materials, employee's time, and instructor's time, have been estimated at \$110 per facility plus \$14 per employee (Vol. II C-II).

In calculating recordkeeping cost, OSHA has utilized the ADL cost factor (Vol. II C-12) for record maintenance but adjusted this cost to reflect the decrease in the records required by the final standard. In its testimony, AISI expressed the view that recordkeeping would require the addition of one record clerk per facility (Tr. 3165-3171). However, the final standard significantly reduces the monitoring records and eliminates medical records for employees whose exposure is below the action level. Therefore, application of ADL's cost formula will give a reasonable approximation of the recordkeeping burden.

For most firms, a normal cost for labels has been determined on the basis of ADL's cost of estimate (Vol. II, C-13). No cost has, however, been determined for signs. Detailed data on a plant-by-plant basis were not available to OSHA. Therefore, no costs for this compliance activity are included within the cost estimates shown herein. OSHA recognizes that these costs will occur but is of the opinion that they will be relatively small for all firms covered.

Compliance costs for the following industries have been calculated by OSHA using the compliance factors described above.

PETROLEUM REFINERIES

It is estimated that petroleum refineries will incur greater compliance costs than any other industry sector. This is primarily due to the large number of refinery workers who are exposed to petroleum products, almost all of which contain benzene. There are 48 refineries engaged in the production of benzene and 275 refineries which do not produce benzene but maintain process streams with benzene concentrations.

At the 48 refineries which produce benzene, there are approximately 1,440 exposed workers. On the basis of the exposure data made available by ADL and industry witnesses, it appears that approximately 20% of these employees are exposed above the permissible exposure limit. OSHA has, therefore, applied the ADL sampling protocol and calculated costs on the assumption that initial measurement will show approximately 300 workers exposed above the permissible exposure limit. The remaining exposed workers were divided for cost calculation purposes. Capital investment to reduce exposure levels has been estimated at approximately \$24 million extrapolating from a model plant analysis. This cost would be for replacement of seals and controls of leaks

(ADL, E-1) and similar indicated improved maintenance and repair. No estimate is made for shut down time since it is anticipated that any controls including modifications of pumps and compressors, would be installed during normal down time (Tr. 536). OSHA does not concur in the API view (Scarborough statement p. 36-7) that additional down time is needed since normal maintenance procedures of highly flammable material require purging of lines, and replacement of seals, pumps, etc. First year operating costs for these refineries are estimated at approximately \$600,000.

Cost estimates for the 275 refineries which do not produce benzene were based on API's and ADL's data as to 98,000 exposed employees. (ADL, Vol. I, p. 419; add API reference for that number). ADL relied in part on the results of an API questionnaire which indicates a wide range of exposures from negligible to as high as 25 ppm. (ADL pp. 4-16 to 4-17). API's witness indicated that exposures at refineries were very low with most below the proposed permissible exposures limit and many below the action level (Tr. 1467-1468). Other testimony indicates similar exposure patterns (Grosperon statement, pp. 4-6). The API post hearing submissions suggest that refinery workers move frequently from one post to another so that they are not exposed to hydrocarbon vapors for extended periods of time (API, PH5). Initial monitoring results showing 8 hour TWA measurements of 0.13 ppm and lower were cited by API. (API PH 8-9.) In the face of conflicting data of this sort, it was assumed that approximately 5,000 workers initially could be found to be exposed above the permissible exposure limit, that approximately 5,000 would be exposed at levels between the permissible exposure limit and the action level, and that the remaining 88,000 would be below the action level. This distribution indicates somewhat higher exposure levels than API's testimony suggests, but lower levels than the results of the API questionnaire survey might be construed to indicate and is, therefore, intended to be a reasonable estimate. Using this distribution, OSHA estimates first year operating cost for compliance to be approximately \$12.8 million. It may be noted that approximately \$2 million of the indicated first year cost is for exposure measurements. Since many refineries have apparently made such measurements, actual first year compliance costs may be substantially lower than the estimates listed herein.

The cost of capital investment in engineering controls is estimated to be \$110 million, for control of leaks from seals and valves, control of sumps and other disposal areas, and control of other emissions associated with stor-

age, transfer, and gauging activities. If it is assumed that application of engineering controls is highly effective in bringing all worker exposures to levels below the action level, recurring annual costs would decline to approximately \$3.5 million. If, alternatively, it is assumed that as many as 5,000 refinery workers may continue to be exposed at levels between the action level and the permissible exposure limit, recurring annual costs would be approximately \$4.4 million. OSHA believes the latter assumption is indicative of the upper bound of these annual costs.

COKE PLANTS

Compliance costs related to the production of benzene as a byproduct of coking are associated with activities at the coke batteries and at light oil processing facilities.

There are some 65 affected coke producing facilities. ADL had estimated that there were approximately 17,000 employees potentially exposed to benzene at coke oven batteries. The American Iron and Steel Institute (AISI) challenged this number as being an underestimation of exposed employees. The larger figure of 24,000 workers exposed at the coke oven batteries has been used by OSHA as urged by AISI. (TR 4635, 472-4) This was the number estimated to be exposed to coke oven emissions in the Economic Impact Statement for the Coke Oven Emissions Standard. It is probable that this constitutes an overestimate of workers exposed to benzene at the coke oven batteries since benzene emissions are expected to occur only during portions of the production cycle and not at all locations. (ADL, PC, 15f, 15i).

The AISI number is used, however, to avoid all possible underestimation of compliance costs for coke oven batteries and to indicate an upper bound to the probable costs. On the basis of data supplied (Ex. 135, p. 4 and attachment), it is assumed that initial measurement of exposures will show all workers exposed to benzene concentrations below the action level. Even if this were not the case, OSHA believes that engineering controls required under the coke oven emissions standard would provide adequate control of benzene emissions. On this basis, the estimated compliance costs are approximately \$1.2 million for first year operating costs and \$860,000 for recurring annual costs. Since employee exposure does not exceed the permissible exposure limit, no capital cost is indicated for compliance with the benzene standard at coke oven batteries.

There are 65 coke oven light oil facilities associated with the coke oven batteries. ADL estimated that 2,370 employees were potentially exposed at the derivative light oil facilities. AISI

argued that this number should be 4,000 employees. Consistent with the reasoning followed to estimate the number of workers exposed at coke oven batteries, the number of workers exposed in the light oil byproduct areas has been estimated to be 4,000, the number used in the coke oven emissions study. Data provided by ADL and AISI indicate that a substantial percentage of these workers may be exposed to benzene above 1 ppm. AISI specifically argued that at least 50% of by-products workers are exposed above the permissible exposure limit (AISI brief, p. 95). Consequently, to avoid any possible underestimation of compliance costs and indicate the upper bound of such costs, it has been assumed that all exposed workers will be exposed above the PEL at the time of initial measurement. Using these estimates of exposure, estimated compliance costs are \$5.6 million for first year operating costs. OSHA has assumed that, after the installation of engineering controls, all exposures will be between the action level and the permissible exposure level. Since a significant number of light oil plants are old, controls may not result in reduction of exposure to below the action level. AISI expressed the view that engineering controls for older plants might not be feasible (P.I. statement p. 19); however, it appears that this concern was for economic rather than technological reasons. Thus, recurring annual operating costs are estimated at \$887,000 for training, labels and recordkeeping. Capital costs are estimated at \$19 million for investment in engineering controls.

PETROCHEMICAL INDUSTRY

The petrochemical industry includes firms producing a large variety of products from petroleum feedstocks. Six petrochemicals, accounting for about 90% of domestic consumption (ADL, Ex. 5B, B-96) were analyzed separately by ADL (Ex. 5A, 6-18ff) but since the exposure patterns of each are similar and the economic impacts affect many of the same or competing markets, the costs of petrochemicals have been aggregated by OSHA. The industry sectors included are chlorobenzene, cumene/phenol, cyclohexane, dodecylbenzene, ethylbenzene/styrene, maleic anhydride, nitrobenzene. This follows the analysis provided by ADL and the cost estimates shown are based on ADL's data. Industry participants did not challenge these costs.

There are 92 facilities covered by this standard, with 2,760 exposed workers. (ADL, Ex. 5A, p. 4-4) On the basis of the limited data available on exposure levels (Vol. 1, pp. 4-7; Table 4-8, pp. 4-12 ff), it was assumed that 40 percent of the exposed workforce is exposed to benzene levels below the

action level, 40 percent between the action level and the permissible exposure limit, and 20 percent above the permissible exposure limit. On this basis, first year operating costs will be approximately \$1 million. Capital investment for engineering controls will be approximately \$20.9. Recurring costs will be approximately \$118,000. Recurring costs include training, labels, and recordkeeping since it is assumed that engineering controls will reduce exposures below the action level.

BULK TERMINALS

Storage and discharge of gasoline, and other petroleum products at bulk terminals is included within the benzene standard.

It is estimated that there are 1,992 terminal facilities with 52,345 exposed workers. Testimony by industry witnesses indicated that by and large, no terminal employees were exposed to benzene levels in excess of 1 ppm (Tr. 1469-70, 1472-73; Ex. 115A, 10, pp. 17-19). Using these indicators of possible exposure distributions, OSHA has estimated compliance costs for terminals on the basis of 5,000 workers exposed to benzene between the action level and the permissible exposure limit, exposure with all other workers below the action level. On this basis, first year operating costs would be approximately \$5 million and recurring annual costs would be approximately \$2 million.

It is estimated that there are 21,106 bulk plants employing 23,471 drivers who are potentially exposed to benzene at terminals (ADL, Ex. 5a). Again using the limited data supplied by API, it was estimated that as many as 2,300 of these workers would be exposed at levels above the action level but below the permissible exposure limit. Conversion to bottom loading on all trucks was projected to reduce all exposures to below the action level. On this basis, first year costs were estimated at approximately \$17.9 million, recurring annual costs at \$3 million, and capital investment at \$51.5 million.

OIL AND GAS PRODUCTION

There are approximately 700,000 oil and gas wells in the U.S. and, since any crude oil or natural gas may be expected to contain benzene, all of these are covered by the standard. API indicated that the number of exposed workers is 74,000 and that exposure levels are below the action level (Ex. 115A, 4, Ex. 116). As noted in the section on technological feasibility, workers are normally exposed only intermittently and occasionally, and emissions are limited to points where leaks or spills occur (Galloway, API, Ex. p. 116, pp. 4-5). Proper work practices and good maintenance can minimize

these exposures. It may reasonably be inferred, therefore, that all workers are exposed to benzene levels below the action level. Compliance costs, estimated on the basis of the reasoning used above, are approximately \$39.6 million for first year operations and \$2.6 million for recurring annual operations.

In determining these compliance costs, OSHA has assumed 10 wells per facility in contrast to API's reference to each well as a separate facility. It is probable that even this computation overestimates first year and recurring annual operating costs, since the costing formula for initial measurements allocates substantial charges on a per facility basis, amounting for example to approximately 90 percent of first year costs. The estimated first year costs would be reduced by the amount appropriate for measurements already performed pursuant to the benzene guidelines or the ETS. Monitoring costs would further be reduced where exposures at one workplace are representative of exposures at another.

TRANSPORTATION

Companies engaged in the transportation of benzene and benzene contaminated products are covered by the benzene standard. OSHA's costs analysis, therefore, covers the transportation by pipeline, marine tanker, barge, tank car and tank truck of benzene and benzene products.

The cost analysis for pipelines is based on approximately 3,000 facilities. This figure was furnished by an API witness (Scarborough) who testified that there were 3,000 pipeline facilities employing 12,000 exposed workers. A witness for Williams Pipe Line Company estimated that there are 17,000 exposed pipeline workers (Bailey). The Williams figures, however, may represent total employment, including administrative and clerical workers. OSHA has utilized the figure of 3,000 facilities in combination with the two estimates of exposed workers to yield a range of estimated compliance costs. On this basis first year operating costs are estimated to be approximately \$2.7 million and recurring annual costs for personal protective equipment, training and recordkeeping approximately \$800,000. Since the standard does not require labelling of pipelines, no labelling cost is included. Neither have engineering controls been assessed since industry measurements indicate that all workers will be below the action levels (Bailey).

The number of affected tank car facilities (loading and unloading) was estimated by ADL to be approximately 100, with an average of one exposed worker per facility. (Table 5-1) The exposures of these workers will be dependent on the quantity of the various benzene-containing products shipped

through the facility, the methods of loading and unloading cars, and the effectiveness of efforts to avoid leaks and spills. Conditions are somewhat similar to other facilities at which benzene and benzene-containing liquids are stored and transferred. Following the sampling protocol used throughout this analysis, costs were assigned on the basis that 20 percent of the exposures are above the permissible exposure limit, 40 percent between the permissible exposure limit and the action level, and 40 percent below the action level. It should be noted that, since it was estimated that only one worker per facility would be exposed, monitoring cost were estimated on the basis of 100 employees monitored. Engineering controls are to be installed at these facilities that will effectively control benzene emissions, bringing the exposure levels of all exposed workers below the action level. On the basis of this reasoning, it was estimated that compliance costs will be approximately \$215,000 for first year operations, \$16,000 for recurring annual costs, and \$200,000 for capital investment.

Analysis of tank truck facilities shows a pattern very similar to that for tank cars. The rationale just described yield the following estimates: 200 affected facilities, 200 exposed workers, first year operating costs approximately \$423,000, recurring annual costs approximately \$37,000 and capital investment \$100,000.

Barges are used for the transportation of benzene from refineries to points of utilization. Barges also transport various refined petroleum products primarily for discharge at bulk terminals. It is estimated that there are 480 employees and 240 barge facilities involved in the transportation of benzene. The record indicates that employee exposure during loading and unloading exceeds the permissible exposure limit (Ex. 5A, 4-24). For cost calculation purposes, OSHA has estimated that 20% of the employees are above the permissible exposure limit, forty percent are between the action level and the permissible exposure limit, and forty percent are below the action level. On this basis first year operating costs are calculated at \$526,000, recurring annual costs are calculated at \$95,000 and capital investment is estimated to be \$420,000.

Barges and marine tankers are also used for the transportation of gasoline. The distribution of these exposures, however, appear to resemble those encountered during gasoline production and distribution. In that case, the average cost of compliance per employee in his transportation, loading and unloading operations would range from \$100 to \$750 per employee.

LABORATORIES

Benzene exposures occur in chemical laboratories where benzene and other petroleum-based solvents are used. Where careful laboratory procedures are followed, such as the use of properly functioning hoods and appropriate work practices, exposures should be very low. In order to estimate the range of possible costs, OSHA calculated the cost on the basis of two scenarios. One scenario assumes that 10 percent of the exposed workers are initially exposed above the action level but below the permissible exposure level. The second scenario assumes 5 percent of the exposed workers are initially exposed above the permissible exposure level, 10 percent are exposed between the action level and the permissible exposure level, and all others are below the action level. On this basis, first year operating costs range from approximately \$4.5 million to \$10.9 million. Recurring annual costs would be approximately \$2.4 million, if all workers exposures drop below the action level after the first year, which is expected as a result of appropriate controls and work practices.

RUBBER PRODUCTS

The ADL study examined the potential for benzene exposure in plants manufacturing rubber tires and other products, such as belts, hoses, fittings, and coated fabrics. ADL identified 206 affected tire producing facilities employing 11,400 exposed workers. The study cited data indicating that exposure levels were generally in the range of 1-3 ppm and may be considerably higher (ADL, Ex. 5A, pp. 14-19; Tr. 4-20). Similar testimony was provided by Drs. Tyroler and Harris of the University of North Carolina based on their studies of benzene exposure in the rubber industry. (Tr. 3083-3095) Both studies indicated that control of exposure could be achieved, reducing exposure levels to below the action level, by substitution of materials and enforcement of appropriate work practices, and that engineering controls would not be required. (Tyroler, Tr. 3086) Compliance costs were estimated, therefore, on the basis of all exposed workers being exposed initially above the permissible exposure limit, and exposures reduced to below the action level after controls have been instituted in tire manufacturing plants.

First year operating costs were estimated to be approximately \$15.8 million and recurring annual costs approximately \$407,000.

The analysis of firms producing other rubber products was based on the same considerations of workers exposed and compliance activities. For these firms first year operating costs were calculated at approximately \$18.1 million, and recurring annual costs at approximately \$484,000 based on 197 facilities with 13,050 exposed workers.

OTHER INDUSTRIES

There are a number of other industries in which benzene exposures will occur due to the use of solvents, containing benzene in the processes or products involved. OSHA has estimated the approximate level of anticipated compliance costs for 16 industries thought to be representative of the range of cost impact involved: Adhesives manufacture and application, paint manufacture and application, paint stripper manufacture and application, printing ink manufacture, and gravure printing, metal can production, manufacture of photographic equipment and supplies, production of motors and generators, commercial printing manufacture of folding paper-board boxes, paper mills, and manufacture of wood household furniture. Firms in these industries are relatively small, use similar materials, will have generally low exposure levels, and can effect control of all worker exposures to below the action level by substitution of materials and enforcement of good work practices. It is OSHA's judgment that most of the employees in these industries are exposed to benzene levels below the action level. However, some data in the record on employee exposures related to the use of these solvents indicate that some workers in particular industries may be exposed at higher levels. OSHA feels that the probable range of costs can be indicated by calculating the costs under two hypothetical exposure patterns: (1) If 10 percent of the exposed workers are exposed above the action level, but below the permissible exposure limit, and all other employees are exposed below the action level; and, (2) if 5 percent of the workers are exposed above the permissible exposure limit, 10 percent between the action level and the permissible exposure limit, and all others below the action level. Costs calculated in this way indicate that, in these industries, the first year operating costs will lie in the range of \$2,000 to \$3,270 per facility, or \$240 to \$390 per exposed worker.

OSHA is aware that there are other industries where employee exposure to benzene may occur. However, although an opportunity to present data and views as to the application of the benzene standard to all industry sectors was afforded, no submissions were made on behalf of these industries. In the absence of exposure and cost data, OSHA has been unable to calculate costs for those industries. In summary, OSHA finds that the economic impact of the final benzene standard will not be such as to threaten the financial welfare of the affected firms or the general economy.

OTHER ECONOMIC IMPACTS

In addition to assessing the compliance cost and economic feasibility of

the proposed standard, OSHA evaluated the economic impact of the proposed standard on affected industries and the general economy utilizing the criteria of Executive Order 11821 (39 FR 41501) as amended by Executive Order 11949 (42 FR 1017), and related implementing instructions particularly Secretary's Order 15-75 (40 FR 54484). The evaluation of such impact was made a part of the economic analysis of ADL. The methods of evaluating these impacts and the conclusions reached were extensively discussed during the benzene hearing.

The portion of the ADL study was designed to show the economic effects of compliance with the proposed final benzene standard upon affected industries. OSHA believes that this analysis, as modified to reflect the changes made in specific provisions in drafting the final standard, adequately defines the economic impact of the final standard.

ADL's analysis was, as discussed further below, challenged by witnesses for AISI and API on the ground that it was not sufficiently rigorous. Neither AISI nor API questioning of the ADL costing methodology indicated serious disagreement with the data used. Nor did these witnesses offer any evidence tending to disapprove the conclusions reached by ADL, or suggest specific analytical procedures which, if followed, would clearly improve the study and increase the accuracy of the findings. After careful consideration of each of the questions raised by these and other witnesses, OSHA has made minor modifications in some elements of the cost analysis, and has concluded that the evidence indicates that the economic impact of the final standard may be more widespread than that shown in the ADL study but less severe for the industries analyzed by ADL.

IMPACT ON ENERGY, CRITICAL MATERIALS, AND OTHER MACROECONOMIC VARIABLES

The ADL analysis indicated that there would be no significant change in either the supply or demand sides of the markets for energy or critical materials.

Two economists testifying for API argued that these were important areas of potential impact improperly ignored by ADL. Scarbrough, p. 4-5 and Henderson, p. 6-7). Under questioning at the hearings, however, neither witness offered any data indicating that these effects would be significant or put forth any reasons to suggest that they would be. (Tr. 2225-2226, Scarbrough, and Tr. 2212-2214, Henderson.)

IMPACTS ON PRICES

The compliance costs identified in the cost analysis provided the basis for

estimating the impact on prices, output and labor productivity. The indirect costs resulting from increases in the prices of benzene and products made from it were identified and included in the estimation of impacts on producers and consumers. Capital costs were amortized over 7 years at 10 percent to reflect a normal return on investment. ADL assumed that the price would increase in the long run by the amount of any increase in long run average cost, including the normal return to investment. This provides a reasonable approximation of maximum potential price impact, and OSHA considers it to be acceptable where exact costs cannot be known and precise measurement of price changes is not feasible.

IMPACT OF PRICES ON OUTPUT AND MARKET STRUCTURE

Economic impact was judged on the basis of expected overall influence of price increases, product substitution, price elasticity of demand, market growth, volume of imports and exports, market concentration, and compliance cost differentials.

ADL reasoned that buyers of benzene will continue to purchase the same quantities after a small price increase, provided there are no economical substitutes for benzene and provided that they can pass the added cost along in the price of their products. If users of the end products reduce their purchases in response to the cost pass-through, then the industrial purchasers will change the mix of products they manufacture and buy less benzene. The elasticity of consumer demand in turn depends on whether consumers can substitute other goods of the same type for those whose prices increase as a result of the cost pass-through, and whether consumers reallocate their incomes to buy other kinds of goods and services while buying less of the ones whose prices increased.

The magnitude of the expected costs is such that the percentage change in consumer product prices would be very small. No income effect (reallocation of income) of any significance would be expected. Therefore, elasticity would reflect almost entirely the availability of substitutes, as ADL indicated, although this conclusion would be questionable if a large price change was anticipated. ADL's product-by-product discussion of the availability of substitutes for benzene and for the petrochemical products made from benzene showed clearly that in all major product lines substitutes were judged to be technically inferior and more costly, at best, and unavailable with present technology in many instances. (ADL, Ex. 5A, pp. 6-18 to 6-22.) Consumer substitution was also judged to be sharply limited on the

basis of the quality and cost of available substitutes. OSHA believes that the reasoning followed by ADL in this qualitative analysis is reasonable.

Using an estimate of relatively inelastic demand for benzene (elasticity = -0.5) (ADL pp. 6-11) and an estimated price increase of approximately 1 percent, ADL estimated that demand for benzene would fall by approximately 0.2 percent (16 million pounds) in the short run and by approximately 0.5 percent (54 million pounds) in the long run for refineries and steel companies producing benzene. Since the demand for benzene is growing moderately, these decreases would represent a slight decrease in the amount of growth, rather than an absolute decline from current levels of production. Foreign trade accounts for only 5 percent of U.S. supply and is not expected to be a significant factor affecting domestic producers, considering the small projected change in price.

The price of benzene is determined by petroleum refiners, who supply 95 percent of the market. Since coke oven producers will incur higher compliance costs than the benzene producing refineries, they will be able to recover only part of their costs through price increases and will be adversely affected by the standard. It appears probable that some producers of benzene from coking operations will choose to sell their light oil to other firms rather than continuing to produce benzene (AISI). Similarly, some refineries now producing benzene may elect to change their product mix to eliminate benzene production. These decisions will be made by benzene producers on the basis of many factors affecting the profitability of benzene production and not on the basis of the impact of this standard alone.

No data were submitted in the hearings that provided a basis for estimating the number of firms that may eliminate benzene production. It was not contended, however, that any producing firm will be forced to close or be forced into an unprofitable position as a result of the compliance costs associated with this standard.

IMPACT OF PRICE ON EMPLOYMENT AND PRODUCTIVITY

Since ADL projected no absolute decrease in total production of benzene, it did not project employment losses for benzene producers. API witnesses questioned this on the basis of their challenge of the analysis of demand elasticity, price change, and reduction of demand. (Scarborough, pp. 24-25; Henderson) OSHA reasons, however, that if these elements of the analysis are acceptable, the conclusion that production employment will not decline is valid, although some reallocation due to structural changes in the industries may occur.

API also argued that increased labor cost resulting from compliance programs could lead to some substitution of capital for labor. (Henderson, p. 10) In its testimony, ADL pointed out that the productivity of both labor and capital would decline in the same order of magnitude and that this would indicate that substitution would not occur. (TR p. 584) ADL also submitted that the industry sectors in question are quite capital intensive and that for this reason, "it is not anticipated that the proposed regulation would have any observed effect upon the utilization rate for labor in these industries." (ADL post hearing, Ex. 15N)

OSHA recognizes that some decline in overall labor productivity may result from adding compliance personnel such as technicians and hygienists to the work force of benzene producers, although the direct productivity of production workers is not affected. This decline was estimated by ADL to be approximately 1.4 percent for coke producers and 0.6 percent for refineries (ADL, Ex. 5A, Table 6.5, p. 6-16).

BENEFITS

The legislative history and language of the Occupational Safety and Health Act, as distinguished from some other environmental and safety legislation, clearly indicate that Congress has already arrived at a judgment concerning the balancing of cost and benefit, with the result that worker safety and health are to be heavily favored over the economic burdens of compliance. Specifically, Section 6(b)(5) of the Act provides that

the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

Thus, while feasibility is an appropriate consideration, the Secretary is directed to set standards which attain the "highest degree of health and safety protection for the employee . . ."

This does not mean, however, that a systematic evaluation of costs and benefits is not to be encouraged within the limits of the estimation techniques. In considering the issue of feasibility in this rulemaking, as in

others, OSHA has carefully evaluated the cost of compliance which may be incurred by the directly affected employers and their ability to comply. Additionally, OSHA believes that a standard for a substance which has been found to pose a cancer risk to workers, in this case benzene, must assure maximum benefit (i.e., prevention of serious illness or death), constrained only by the limits of feasibility.

There is general agreement that benzene exposure causes leukemia as well as other fatal diseases of the bloodforming organs. In spite of the certainty of this conclusion, there does not exist an adequate scientific basis for establishing the quantitative dose response relationship between exposure to benzene and the induction of leukemia and other blood diseases. The uncertainty in both the actual magnitude of expected deaths and in the theory of extrapolation from existing data to the OSHA exposure levels places the estimation of benefits on "the frontiers of scientific knowledge." While the actual estimation of the number of cancers to be prevented is highly uncertain, the evidence indicates that the number may be appreciable. There is general agreement that even in the absence of the ability to establish a "threshold" or "safe" level for benzene and other carcinogens, a dose response relationship is likely to exist; that is, exposure to higher doses carries with it a higher risk of cancer, and conversely, exposure to lower levels is accompanied by a reduced risk, even though a precise quantitative relationship cannot be established. In light of the uncertainties in this area of scientific knowledge, OSHA believes that it is required by prudence and by the statutory mandate to adopt a highly protective posture in considering the evidence for health benefits.

Various witnesses argue that cost benefit or cost effectiveness should be the primary criterion for regulatory decision. OSHA was criticized by industry participants for failure to consider what benefits would be derived from reducing the current permissible exposure level for benzene (API brief, page 92, 96; AISI brief, page 89, 97). The Council on Wage and Price Stability (CWPS) also suggested that OSHA estimate the incremental reduction in health risks which are associated with the reduction in employee exposure to benzene (Bosworth letter, 9/12/77, to Bingham).

Both CWPS and industry suggested ways in which this could be achieved. CWPS suggested that OSHA apply the expected lifetime incidence rates of leukemia and the increased incidence rates revealed by the scientific studies to the benzene exposed population to derive the number of expected

excess cases attributable to that exposure. An MCA witness, Dr. Wilson, assumed a dose response relationship and calculated that at the current exposure levels only one leukemia and one other cancer would be observed among the benzene exposed workers covered by the proposal every 6 years (Ex. 149-B). This witness further testified that the proposed standard would cost \$300 million for every hypothetical life saved (Tr 2750) and concluded as a result that the risk from benzene related deaths is comparable to many other socially acceptable risks.

An API witness contended that rational allocation of OSHA's resources required policies that utilize cost effectiveness as the primary basis for regulatory decisions. He further argued that OSHA should make an assessment of what risks exist from exposure to benzene at 1-10 ppm., which should then be compared with estimates of risks posed by other health hazards such as from cotton dust (Tr. 2157) as well as with the risk associated with other activities of society which he termed generally acceptable risks in order to determine whether the cost of the benzene standard is warranted.

In the face of the record evidence of numerous actual deaths attributable to benzene-induced leukemia and other fatal blood diseases, OSHA is unwilling to rely on the hypothesis that at most two cancers every six years would be prevented by the proposed standard. By way of example, the Infante study disclosed seven excess leukemia deaths in a population of about 600 people over a 25-year period. While the Infante study involved higher exposures than those currently encountered, the incidence rates found by Infante, together with the numerous other cases reported in the literature of benzene leukemia and other fatal blood diseases, make it difficult for OSHA to rely on the Wilson hypothesis to assure the statutorily mandated protection of employees. In any event, due to the fact that there is no safe level of exposure to benzene and that it is impossible to precisely quantify the anticipated benefits, OSHA must select the level of exposure which is most protective of exposed employees.

We recognize that in view of the latency period usually associated with the induction of cancer, significant reductions in mortality may not be seen for many years. However, unless exposures are reduced now, OSHA believes that the mortality rate will not decline and employees exposed to benzene will continue to suffer excess mortality. Finally, it should be noted that this standard for employee exposure to benzene cannot be simply described as a reduction in permissible exposure from 10 ppm. to 1 ppm. as a daily aver-

age. The previous standard for worker exposure to benzene permitted daily exposures as high as 50 ppm. for a period up to 10 minutes and repeated exposures of 25 ppm., levels which are known to produce serious hazards of blood diseases.

In making judgments about specific hazards, OSHA is given discretion which is essentially legislative in nature. However, in setting an exposure limit for a substance like benzene, OSHA may not substitute cost benefit criteria for the legislatively determined directive of protecting all exposed employees against material impairment of health or bodily function. Where the health effectiveness of the alternative approaches are extremely uncertain and likely to vary from situation to situation, OSHA must adopt the compliance strategy which provides the greatest certainty of worker protection even if that approach carries with it greater economic burdens for the affected employers. In the case of the benzene standard, the evidence in the record indicates that the costs of compliance are not overly burdensome to industry. Having determined that the benefits of the proposed standard are likely to be appreciable, OSHA is not obligated to carry out further exercises toward more precise calculations of benefit which would not significantly clarify the ultimate decision. Previous attempts to quantify benefits as an aid to decision making in setting health standards have not proved fruitful (41 FR 46742).

Based upon the foregoing and the record as a whole, OSHA finds that compliance with the standard (even if the higher cost estimates suggested by some participants are used) is well within the financial capability of the covered industries. Moreover, although the benefits of the standard cannot rationally be quantified in dollars, OSHA has given careful consideration to the question of whether these substantial costs are justified in light of the hazards of exposure to benzene. OSHA concludes that these costs are necessary in order to effectuate the statutory purpose of the Act and to adequately protect employees from the hazards of exposure to benzene.

VI. SUMMARY AND EXPLANATION OF THE STANDARD

The following sections discuss the various issues raised during the benzene rulemaking proceedings, the individual requirements of the permanent benzene standard and the rationale and policy considerations underlying the provisions of the standard. In developing these requirements, OSHA has considered all the evidence in the benzene record. After consideration of all of this evidence, OSHA has revised and clarified, as described in detail

below, certain provisions of its proposed benzene standard.¹

Scope and Application: paragraph (a) This standard applies to occupational exposure to benzene in all workplaces in all industries where benzene is produced, reacted, released, packaged, transported, handled or otherwise occupationally used, except for the agriculture industry. Thus, the standard applies to "general industry" as well as to the construction and maritime industries. By specific exclusion discussed in detail below, the standard does not apply to the sale, discharge, storage, transportation, distribution or use as a fuel of gasoline and other fuels, subsequent to discharge from bulk terminals. The application of the standard is further limited in that not all of the requirements of the standard will apply to every employer regardless of the conditions in his workplace. The permanent standard, unlike the emergency temporary standard and the proposed standard, incorporates an action level so that the specific provisions of the permanent standard that apply to any particular workplace depend upon the extent of employee exposure to benzene. Additionally, only the labeling requirements of paragraph (k) (2), (3), (4), and (5) and the training requirements of paragraph (j) apply to workplaces where the only benzene is contained in sealed intact containers.

The scope of the final standard has been significantly changed from the scope of the proposal and the emergency temporary standard. OSHA was faced with several alternatives in deciding on the extent of coverage of the benzene permanent standard and in achieving its objective of maximizing the protection afforded employees occupationally exposed to benzene while limiting the burden placed on their employers. Benzene, as pointed out earlier, is used in a vast number of operations in quantities varying from trace amounts in solvents to large amounts of pure benzene. Coverage of all workplaces where benzene is present would, of course, extend the protection of the standard to the greatest number of employees. It would mean, however, that workplaces where benzene is present only in trace amounts and potential employee exposure is minimal would be subject to the same exposure monitoring and medical surveillance requirements as workplaces where the potential for high employee exposures exists. While this would satisfy that part of OSHA's objective of maximizing the protection afforded employees, it would fail to reasonably limit the burden placed on employers.

¹For the convenience of the public, OSHA has included, as part of the title of each section of the summary and explanation of the standard, the particular paragraph of the standard to which the discussion refers.

PROPOSED PERCENTAGE EXCLUSION

The proposal and the emergency temporary standard both would have exempted from coverage those operations utilizing liquid mixtures containing 1 percent or less benzene by volume. The proposal would have limited this 1 percent exemption to the first year of the standard after which period only liquids containing 0.1 percent or less benzene by volume would be exempted. The proposed percentage exemption was based on some indication that exposures resulting from the use of mixtures containing less than 1 percent benzene would generally be less than 1 ppm (42 FR 27453-4). It was also anticipated that the percentage exclusion would lead to a reduction of the benzene content in solvents or to substitution of other substances for benzene with the result that employee exposure to benzene would be reduced or eliminated. As a result of evidence developed during the benzene rulemaking, however, OSHA has determined that the percent exclusion cannot be supported on this basis. The benzene record indicates that there is no consistent predictable relationship between the percent of benzene in a liquid mixture and the resultant airborne exposure to benzene (Tr. 3120). Studies conducted by the University of North Carolina demonstrated that exposure levels varied considerably during various work operations utilizing liquid mixtures containing the same percent of benzene (Tr. 3090-3091). Support for the conclusion that a less than one percent benzene solution can result in exposures above 1 ppm is found in testimony suggesting that other factors than the percent of benzene in the liquid may be determinative of exposure levels. Thus, NIOSH testified that employees working with No. 6 fuel which contains only 0.1 percent benzene were exposed to levels as high as 60 ppm under certain conditions of confined space, poor ventilation or elevated temperatures (Tr. 754). The University of North Carolina data also revealed that exposure levels in heavy duty tire spraying utilizing rubber solvents were 1.3 ppm when sprayed by the regular full time operator but reached 5.2 ppm and 7.3 ppm when sprayed by a substitute operator (Tr. 3093). This suggests that work practices are also determinative of exposure levels. To maximize protection of employees, it is necessary to reduce their exposure to benzene, to the lowest feasible limit. Since the percentage of benzene in a liquid is not in itself necessarily controlling of the employee's exposure level, the proposed percentage exemption, would not achieve this objective. Accordingly, the final standard does not contain a percentage exemption and thus applies to all liquid mixtures containing

benzene regardless of the percent of benzene.

It is OSHA's view that the absence of a percentage exemption does not eliminate all incentive to reduce the amount of benzene in liquid mixtures. Where another substance is totally substituted for benzene, this standard will obviously not apply. Additionally, it should be noted that the inclusion of an action level will effectively limit the burden of this standard where employee exposure is found to be low because of its limited presence in a mixture.

BENZENE SUBSTITUTES

In lieu of the percentage exception, OSHA considered the option of exempting from the standard certain benzene substitutes, such as toluene and xylene (although they may contain small amounts of benzene). An exemption of this type would encourage employers to discontinue the use of benzene and utilize a substitute in order to avoid the requirements imposed by the benzene standard. These substances themselves, however, do contain varying amounts of benzene and, as stated above, there is no evidence of a consistent direct predictable correlation between the amount of benzene and exposure levels. Thus, it was concluded that toluene and xylene, to the extent they contain benzene and result in benzene exposure, would be covered by the standard.

ACTION LEVEL

OSHA recognizes that the lack of a percentage exemption substantially expands the coverage of the benzene standard to operations which may otherwise have been exempt. In many of these operations, exposure levels below the permissible exposure limit have already been achieved. To minimize the impact of the standard on those employers who have attained these low exposure levels, the final standard provides for an action level. This action level is a benzene exposure equal to one-half of the permissible exposure limit above which certain precautionary measures, such as periodic monitoring and medical surveillance programs must be conducted and below which only a very limited number of the standard's requirements will apply. Thus employees who have an initial exposure measurement below the 0.5 ppm TWA action level will not have to be monitored periodically. If the initial monitoring exposure measurement is below the action level, no further monitoring is necessary until such time as a redetermination may be required as a result of a process, control or personnel change. Furthermore, medical surveillance of individual employees whose initial exposure measurements are below the

action level would not be required. Nor would regulated areas need to be established or engineering or work practices instituted or respirators provided. All other provisions of the standard, however, would apply and the employer would need to train his employees in the hazards of benzene exposure, to properly label his products and to maintain the record of the initial exposure measurement and, if any, the record of the redetermination measurement.

The adoption of an action level had been recommended by several participants to the rulemaking. NIOSH, recommended that an action level for periodic monitoring and routine periodic medical exams be incorporated for the purpose of assuring that no employee is exposed above the permissible exposure limit (Tr. 749-750). Industry participants advocated a level which would trigger the periodic monitoring of employee exposure (Com. 24; Com. 72; P.C. 36 AISI brief p. 74, FT. no. 168). A need for an action level is also suggested by the record evidence that some minimal exposure to benzene occurs naturally from animal and plant matter (Tr. 749-750; 759-760). Naturally occurring benzene concentrations, it appears, may range from 0.02 to 15 parts per billion (Ex. 117, p. 1). Additionally, it was suggested by certain employers that their operations be exempted from the requirements of the standard because those operations involve only intermittent and low level exposures to benzene. The use of the action level concept should accommodate these concerns in all cases where exposures are indeed extremely low since it substantially reduces the monitoring of employees who are below the action level and removes for these employees the requirement for medical surveillance. At the same time, employees with significant overexposure are afforded the full protection of the standard.

In developing this regulatory approach to occupational exposure from benzene, OSHA considered the request of those participants to the rulemaking who pressed for exemption from the benzene standard of their particular operations.

BULK TERMINALS

The final standards apply to bulk terminal operators but exclude exposure from gasoline, motor fuels and other fuels subsequent to the discharge from the bulk terminal.

During the rulemaking, bulk terminal employers requested that their gasoline operations be exempted from the benzene standard. Bulk terminals are the primary distribution facilities in the gasoline marketing network. A bulk terminal is the first distribution point of gasoline after the gasoline is processed by the refinery. Gasoline

products are transferred from refinery storage to the terminal by pipeline, tanker or barge (Comeaux statement, p. 11; A.D. Little, vol. II, D-35) and placed in larger storage tanks (Tr. 2353) at the terminal. Further distribution from the terminal is most commonly by tank trucks (Comeaux statement p. 11). The gasoline is pumped from the terminal storage tanks into the trucks and distributed directly to consumers, to retail outlets, i.e. retail service stations, or to other secondary distribution points. These secondary distribution points are smaller terminals (Tr. 476) referred to as bulk plants, which also distribute the gasoline by truck to ultimate consumers, such as farmers and small businesses, or to retail outlets. Final distribution of gasoline to retail service stations and to ultimate consumers is, therefore, by truck and either from a bulk terminal or a bulk plant (Comeaux statement, p. 11). Gasoline emissions occur at the storage tanks, at the tank trucks, and from leaks and spills, with the major emissions occurring when tank trucks are being loaded with the gasoline. The majority of terminal storage tanks are equipped with floating roofs which are effective in reducing storage emissions. Some tank trucks have bottom loading which reduces emissions during loading (Tr. 1294).

Participants in the benzene rulemaking argue that the exclusion of gasoline storage and distribution activities subsequent to discharge from the terminals results in an artificial distinction between bulk plants, which are not covered by the standard, and bulk terminals which are covered. (API P.C. 33, pp. 138-140; Comeaux, p. 12 Sexton p. 22). In support of this contention, industry furnished evidence that exposures at bulk plants were similar to exposures at bulk terminals (Ex. 115A-10; Sexton, p. 18; L.C. 4) and that bulk plants handle the same products, utilize similar handling procedures and use basically the same equipment as bulk terminals. From the technological standpoint, it also appears that several of the same types of vapor recovery systems can be utilized by both the bulk plants and the bulk terminals (Tr. 236). The major difference between bulk terminals and bulk plants, it was said, is a difference in the number of gallons of gasoline distributed (Sexton; Durham L.C. 4).

Although this description of bulk terminals and bulk plants suggests that there may exist some basis for treating bulk plants in a like manner to terminals, it does not necessarily follow that bulk terminals should be excluded from the standard. The question of what regulatory action should be taken with regard to bulk plants was, by specific notice issued prior to the benzene hearing (42 FR 32363),

not an issue at the benzene hearing. This exclusion of post terminal gasoline marketing activities from the benzene rulemaking was not based on the absence of any hazard. Rather, as stated in its FEDERAL REGISTER notice, OSHA concluded that regulatory efforts to reduce workers' exposure to benzene released during the transportation, storage, distribution and sale of gasoline subsequent to discharge from bulk terminals should await the conclusion of the deliberations of the inter-agency (OSHA-EPA-NIOSH) task force which was actively considering those activities. (As pointed out in the preamble to the proposed benzene standard (42 FR 27453) certain phases of the downstream gasoline activities which have been exempted from the standard, involve additional hazards which may necessitate different protective requirements and the development of appropriate equipment control devices, and require that these downstream operations be handled in an integrated manner.) In the same notice excluding bulk plants as an issue at the benzene hearing, OSHA solicited data and comments regarding those distribution activities "in order to assist in the subsequent development of a proposal for this industrial segment." Therefore, OSHA has presently under consideration the question of what types of regulatory action to propose for the protection of bulk plant employees exposed to benzene. Pending this regulatory action, bulk plants and other post terminal operations will continue to be subject to the requirements of 29 CFR 1910.1000 and to meet the exposure limits of Table Z-2 of that section.

The exclusion of bulk plants from the notice of the benzene rulemaking precludes regulation of those facilities in this final benzene standard. Exemption of the bulk terminals which were covered by the notice of rulemaking, however, would remove from the protection of this standard those employees who are involved in terminal activities. Data from eleven companies indicate that they operate 892 bulk terminals employing 9,900 employees (Comeaux, p. 12). One company alone estimated that over four thousand of its employees were exposed to benzene in its gasoline marketing operations covered by the standard (Sexton p. 20-1). This same company indicated that most of its 924 commissioned agents and 1,014 jobbers handling its products alone would have employees exposed to benzene emissions during terminal activities. It is OSHA's view that benzene's carcinogenicity requires extending the protection of the standard to the greatest number of employees. Accordingly, OSHA deems it necessary to apply this benzene standard to gasoline storage and distribution operations at bulk terminals.

It is OSHA's view that application of the benzene standard to bulk terminal activities will not impose a great burden on bulk terminal employers. The record evidence indicates that the exposures at storage tanks and loading docks at the terminals, of at least some employers range between 0.2 and .41 ppm on an 8-hour TWA (Sexton Ex. 115-A. 10). These ranges are based on measurements taken during the loading of trucks with and without bottom loading equipment. Where employee exposure to benzene is below the action level, as in the case of the range of measurements cited above, the standard imposes a minimum burden upon the employer.

NON-GASOLINE PETROLEUM PRODUCTS AND ACTIVITIES

Industry participants further argued that exemption of downstream gasoline marketing operations discriminates against the non-gasoline phases of the petroleum industry, such as oil and gas production, pipelines, marine petroleum transportation, refineries and petrochemical facilities, because worker exposures and compliance costs are comparable (API PC 33, pp. 140 ff, Com. 29). Crude oil and natural gas producers further argued for exemption of their facilities because conditions at their facilities—namely, open air workplaces, widely scattered employees, the transient nature of their workforce and essentially no exposure to benzene, made compliance burdensome (Com. 33). As stated above, the need to protect the many workers involved in the non-gasoline activities necessitates the inclusion of these activities in the benzene standard. Furthermore, by virtue of the action level concept, these very factors cited by the oil and gas producers will substantially mitigate the burden of the permanent standard on employers.

Air transport participants using aviation fuels, such as kero jet, argued that non-gasoline aviation fuels be included in the gasoline aviation marketing exemption. OSHA agrees. OSHA recognized, in its preamble to the proposed benzene standard (42 FR 27453), the special need to coordinate the Federal Government's efforts in reducing benzene exposure in certain aspects of the distribution of gasoline and other motor fuels. The joint OSHA-EPA-NIOSH task force, consequently, has under consideration the matter of non-gasoline motor fuels. Besides kero jet, there are other types of motor fuels, such as diesel fuels, which raise the same issues of control as gasoline. There may be other motor fuels containing benzene on which OSHA does not have data. OSHA is conducting its own review of gasoline and has solicited information from the public on gasoline (42 FR 32263). It is, therefore, OSHA's intention to determine the

regulatory action to be taken on non-gasoline motor fuels after review of the data and recommendations of the joint Federal task force and evaluation of the information furnished in response to OSHA's notice on gasoline. For these reasons, OSHA has exempted from the permanent benzene standard the storage, transportation, distribution, dispensing, sale or use as a fuel of all fuels (including gasoline, jet fuel, and diesel fuel) subsequent to their discharge from bulk terminals.

CLOSED SYSTEMS

Some participants requested exemption from the standard for workplaces where benzene is present solely in closed systems. The record evidence, however, indicates that closed systems frequently develop leaks, and that it is the amount of the solvent exposed to air (Tr. 3111-3) which, among other variables, is a major determinant in the degree of exposure. Accordingly, OSHA has retained coverage of closed systems in the final benzene standard. However, in the absence of leaks, exposures from closed systems should be below the action level and the impact of the standard in such operations should be minimal.

LABORATORIES

Still another segment of industry requested an exemption from the benzene standard. Many comments requested that research facilities in both industrial and academic laboratories be exempted from the benzene standard (Com. Nos. 14, 20, 57, 62, L.C. 12, L.C. 13) particularly where the permissible exposure limit is not exceeded (Com. 56, 58). Some comments suggested that separate requirements be developed for laboratory use of benzene (L.C. 12, L.C. 13). These requirements could include mandatory use of hoods (L.C. 9, Com. 21) of a specified velocity (L.C. 8, Com. 18) and periodic medical surveillance (Com. 18, 28, 29, 64, 70); annual inspection in lieu of monitoring (Com. 28); written safety rules (Com. 18) and container labeling (Com. 39) were also suggested. In the alternative, it was suggested, OSHA should promulgate separate regulations for all chemicals used in laboratories (L.C. 12, L.C. 13), since laboratories use a variety of chemicals, and compliance with separate regulations for each chemical, it was argued, would be burdensome (Com. 58).

The requests for exemption from the benzene standard or for special treatment of laboratories were largely based on the view that there exists a lesser, or slight, risk of exposure to benzene for laboratory technicians. In support of this contention, laboratories pointed to the manner in which they use benzene. Laboratories, it was stated, generally use small quantities of benzene at a time (Com. 10, 28, 38).

One laboratory reported that sometimes a sample is dissolved in only one ml of benzene (L.C. 2). That laboratory estimated that an individual laboratory technician, who analyzed 25 samples per day, 7 days a week, would use less than four gallons of benzene a year (L.C. 2). When not in use, benzene is stored in closed containers (L.C. 1).

The argument that laboratory technicians are trained in the hazards of chemicals was also made to support the view of lesser risk. One laboratory reported that it conducted blood tests every four months for twenty years of its technicians, and found no problem (Com. 4). Another reported that in thirty-five years, none of its employees developed leukemia even though exposures in the laboratory were between 1 and 20 ppm (Com. 31).

Another reason advanced for exemption or separate treatment of laboratories was the burden and cost of implementing exposure monitoring, engineering controls and medical surveillance (Com. 4, 5, 10). One industry comment argued that responsible research and quality control laboratories normally provide and encourage annual physical examinations that include the essentials of the proposed medical surveillance program (Com. 38).

OSHA has determined that applying the provisions of this benzene standard to laboratories is consistent with OSHA's responsibility to protect the health and safety of workers. The record indicates that exposure levels in laboratories vary greatly. While monitoring samples of one laboratory indicated levels of only .01 ppm (Com. 28), others indicated levels as high as 20 ppm (Com. 31; Ex. 39-3). Furthermore, it appears that protective measures vary from lab to lab (Tr. 3157). One chemist, who worked frequently and for several hours a day with benzene during his six years in a research lab that he described as "one of the most prestigious research institutions in the country," testified that employee exposures were not measured, hoods were not used, and there was no medical surveillance program (TR 3492-6). Moreover, there does not appear to be any firm basis to believe that training alone in handling of chemicals adequately protects all laboratory employees from the hazards of exposure to benzene.

Based on the above evidence, OSHA believes that laboratory employees are exposed to the leukemogenic hazards of benzene and, therefore, must be covered by this standard. OSHA does not subscribe to the view that laboratories should be exempted from the benzene standard and that protection for employees exposed to benzene should await promulgation of separate regulations for all chemicals used in

laboratories. OSHA is not currently developing a laboratory standard, and the result of exemption of laboratory workers from the benzene standard would, consequently, deprive them of the necessary protection against the hazards of benzene exposure for some time to come. Furthermore, the provisions of the standard relating to methods of compliance are performance oriented and, therefore, will encompass the suggested special requirements for laboratories. For example, the requirement that the employer institute engineering controls and work practices could be met by laboratories in many instances through the use of properly designed hoods. Also, the inclusion of an action level will minimize the monitoring and medical surveillance requirements in laboratories where employee exposure measurements indeed are low.

Although OSHA has not included special provisions just for laboratories, the provisions of the standard accommodate several of the suggestions of the participants, as noted above. Those laboratory operations where benzene exposure levels are at or below the action level will need to be monitored only initially, and medical surveillance of employees engaged in those operations will not be required. When benzene is sealed in containers, the laboratory employer will be required only to train his employees in the hazards of exposure to benzene, and assure that the container is properly labelled, and provide protective clothing where necessary.

COKE OVEN BATTERIES

Steel industry participants requested an exemption from the benzene standard for coke oven workplaces which are covered by the coke oven emissions standard. Although coke oven emissions at coke oven batteries are regulated by § 1910.1029, it is OSHA's view that there is a need to apply to these workplaces the requirements of the benzene standard, as well. The coke oven standard regulates the benzene soluble fraction of total particulate matter present during the carbonization of coal for the production of coke to protect workers from the risk of developing cancer of the lung and urinary tract. The coke oven standard, however, was not designed to protect coke oven employees from the hazards to the hematopoietic system which can result from exposure to benzene. Benzene exposure can occur from leaks in the ovens or in the collection system or from residual vapors left in the ovens when they are opened and the hot coke is pushed out (Little study, B-21). Accordingly, in order to protect workers from the hematopoietic hazards presented by exposure to benzene, OSHA has concluded that inclusion of all coke oven workplaces in the benzene standard is necessary.

The coverage of coke oven workplaces by both the benzene and the coke oven emissions standard does not create a conflict. OSHA believes that the engineering controls required by the coke oven emissions standard will, in all likelihood, reduce exposures to benzene below the action level. In such a case, the benzene standard will impose on coke oven workers only the burden of conducting initial measurement, retaining a record of that measurement, and the training of employees in the hazards of benzene.

SEALED CONTAINERS

The final standard applies only to the labeling requirements and the training requirements to the storage, transportation, distribution and sale of sealed, intact containers. This is a change from the proposed standard, and the emergency temporary standard which would have applied all the requirements of the benzene standard although benzene were "present" solely in sealed containers. The change in the final standard was made in response to comments to the effect that closed containers of benzene pose no threat of exposure to employees (Com. 10). Participants in the rule-making pointed out that coverage of closed containers would result in employers being required to monitor exposure and make medical surveillance available to employees, such as maritime employees occasionally handling small quantities of benzene in break-bulk form (i.e., drums or packages) (Com. 35), employees of receiving docks and warehouses, and employees involved in inter-departmental transfers of the containers (Com. 28). Additionally, such coverage would also apply the requirements of the benzene standard to employees of retail stores that sell products containing benzene.

Most participants requested exemption of closed containers (Com. 10, 28, 35) without distinguishing between closed and sealed containers. A state agency comment, however, suggested that only "sealed" containers be exempted (Com. 67). OSHA concurs in the view that properly closed containers do not present a health hazard to employees which warrants application of the monitoring and medical surveillance requirements. OSHA, however, is concerned that containers may, after being opened, be closed in such a fashion as to expose employees to a hazard. For this reason, OSHA has adopted the suggestion that the exemption apply only to sealed containers, intending by the use of that term to exempt only containers of benzene which are closed in such a manner as to contain the benzene vapors. However, since sealed containers may, during handling, develop leaks (Tr. 3051-2) and thus expose employees to the hazards of benzene, the exemption is fur-

ther limited to intact containers. Therefore, where the breakage of the container occurs, employers will be required to monitor and to comply with any other applicable provisions of the standard. To assure that all employees are aware of the hazardous nature of the contents of the containers they are handling and because at some point in downstream occupational activities the containers will be opened, the standard applies the training and the labeling requirements to sealed containers. Finally, it should be noted that the regulation of sealed containers in this standard is consistent with that in other carcinogen standards; §§ 1910.1003-1910.1016 exempt sealed containers from their requirements, except for labeling and transshipment.

Definitions: paragraph (b). The standard contains some appropriate definitions. The purpose of providing definitions for key terms is to clarify the intent of those terms as used in the substantive provisions of the standard. All of the definitions of the proposal have been retained in the final standard.

A new definition has been added to those contained in the proposed standard. This is the definition of "Action level." Action level is defined as a concentration of benzene of 0.5 ppm over an 8 hour workday. Industry participants recommended that monitoring be conducted only where exposure exceeds the permissible exposure limits (PC 36, AISI brief, p. 74). OSHA does not agree. It is generally acknowledged that worker exposure to airborne emissions can vary from day to day in a random fashion. This variation in levels is unavoidable; it is only minimally connected to the precision and accuracy of the method of measurement and does not include variations due to wind, temperature and other environmental factors.

Therefore, even though individual measurements of exposure levels may fall below the permissible limit, some possibility exists that on unmeasured days the employee's exposure may exceed the permissible limit. Thus, the concept of an action level provides, statistically, a means by which the employer may assure himself that his employees will not be exposed to benzene over the permissible exposure level (PC No. 14g, p. 5). In view of these considerations and in order to provide a greater degree of employee protection, OSHA has incorporated in the permanent benzene standard an action level of 0.5 ppm.

For those employees whose exposure level is determined by initial monitoring to be below 0.5 ppm, the employer need not do any further monitoring unless a redetermination of exposure is necessitated because of a process, control or personnel change. For these employees, moreover, the employer is

not required to provide medical surveillance. The employer, however, must train these employees, label his benzene products, provide protective clothing where necessary, and retain a record of the initial determination and, if any, record of the redetermination measurement.

Employees whose exposure measurements are above 0.5 ppm, but below 1 ppm must be monitored quarterly and provided with medical surveillance. Where exposures are above the action level but below the permissible exposure limit the requirements for regulated areas, methods of compliance and respiratory protection do not apply but the employer must comply with all other requirements of the standard.

Those employees whose measurements are above 1 ppm must be monitored monthly. All the provisions of the standard, moreover, apply where employees are exposed above the permissible exposure limits.

OSHA has, as suggested by some participants (Com. 46), clarified the definition of benzene to include solids which contain benzene. Some comments suggested that benzene be defined as commercial or high grade benzene (Com. 48, 59, 76). OSHA has not adopted this suggestion because of record evidence to the effect that low concentrations of benzene do not necessarily result in low exposures. Other comments suggested that a definition of benzene exposure be included (Com. 36, 57, 59). The thrust of these suggestions was to limit the application of the proposal's monitoring requirements which applied to workplaces "where benzene is present" and the proposal's medical surveillance requirements which applied to "all employees who are or will be exposed to benzene." For the reasons stated below in the appropriate parts of this preamble relating to these requirements, OSHA has not adopted this suggestion.

A new definition of emergencies was added to the standard to clarify the type of situation requiring the use of a respirator. The definition of emergencies also clarifies the situations in which employees shall be provided with a biological screen.

PERMISSIBLE AIRBORNE EXPOSURE LEVEL, PARAGRAPH (C)(1)

Based upon a thorough review and evaluation of evidence in the record, OSHA has, as stated above, concluded that benzene:

- (1) Is a human leukemogen;
- (2) Causes bone marrow depression resulting in alterations in peripheral blood; and
- (3) Causes chromosomal damage in blood cells.

These conclusions are based on studies ranging from single case reports to

retrospective mortality studies and also experimental evidence. These studies represent the best available evidence upon which OSHA must make a decision. This decision is not predicated on any particular study, but is based on an assessment of the entire set of evidence taken as a whole.

OSHA recognizes that only recently has there been a well-designed study which may indicate a leukemogenic response among benzene-exposed animals. (Nelson, Ex. 178) In any event, the best evidence to date is that based on direct human experience. Based upon such evidence, OSHA concludes that benzene is and must be regulated as an occupational carcinogen.

Comment and testimony from industry for the most part, does not dispute the leukemogenic potential of benzene (e.g. Eckhardt, Ex. 115.B. 1, pg. 3; Tabershaw Tr. 2545). However, industry argues that this relationship is valid only at high exposure levels. In support of this view, they cite as evidence that: (a) the documented cases of benzene-induced leukemia were among employees who were, most probably, exposed to high concentrations, and (b) that several studies of undefined numbers of workers who may have been exposed to low levels of benzene did not demonstrate a leukemia excess (The benzene studies are described under Health Effects: Leukemia). Industry also believes that observable blood disorders precede the development of benzene-leukemia and that such hematological abnormalities are reversible (ORC, PC 34, p. 2; Tabershaw Tr. 2543 Jandl, PC 26B, Allied P.C. 22, p. 7). They conclude that the present exposure limits of 10 ppm TWA and 25 ppm ceiling are sufficiently protective to guard against the development of non-malignant blood disorders and, consequently, that limiting exposure to such levels will also protect against leukemia. (ORC, PC 34; Jandl, PC 26B; Tabershaw, Tr. 2546.)

The issue of the levels at which cancer is induced by chemical agents and whether or not there is a "threshold" has been a major issue in every OSHA rulemaking concerning the regulation of occupational carcinogens (See preambles to Carcinogen standard (39 FR 3758); Vinyl Chloride (39 FR 35892); Coke Oven emissions (41 FR 46742). The benzene hearing was no exception. As in the case of arsenic, the lack of an unequivocal animal model (Kraybill, Tr. 758) requires that the Secretary's decision rely primarily on data obtained from human evidence. However, the epidemiologic method is by its very nature, a retrospective view of the evidence, i.e. findings of a recent excess of mortality among workers may relate to initial exposures occurring as much as 20

years or more previously and which most certainly correlate to exposures at higher concentrations than present levels. Because of these variables, it is extremely difficult to derive definite conclusions as to the quantitative health risk to the workers at exposures near 1 ppm. Studies which report negative findings, such as those studies conducted by Stallones, Tabershaw-Cooper and Thorpe suffer from the disadvantage of not being able to clearly define an exposed cohort, i.e. the identification of a group of workers actually exposed to benzene and to what levels they were, in fact, exposed. (Stallones, Ex. 115.C; Tabershaw-Cooper, Ex. 149A; Thorpe, Ex. 2-34). OSHA recognizes that it is extremely difficult to reconstruct and define employee exposures retrospectively. Therefore, given the uncertainty of the definition of exposure and the potential for dilution of mortality excess among those actually exposed to benzene and other methodological deficiencies, OSHA is reluctant to place substantial reliance upon these negative reports. Thus, there is little definitive information available pertaining to the leukemogenic risk of an adequate size cohort of workers exposed to benzene less than 10 ppm and who have been followed for an adequate amount of time. Furthermore, it is OSHA's view following a careful review of the record that, at the present time, it is impossible to derive any conclusions regarding dose-response relationships for benzene (Goldstein, Ex. 75, p. 2 NRC, Ex. 2-4 p. 11) beyond the general observation that higher exposure levels carry a greater risk than do lower exposure levels. What is apparent however, is that a decrease in exposure level and/or duration will result in a decreased risk of leukemia.

OSHA also recognizes that, in some published cases with adequate documentation, leukemia attributable to benzene exposure developed after observable changes in the peripheral blood, i.e., various cytopenias, pancytopenia and/or aplastic anemia. (Goldstein, Ex. 43B, p. 166.) However, many cases of benzene-induced leukemias were recognized as such only after a patient with overt physical symptoms presented himself to a physician. Similarly, Snyder stated that, in the cases of pancytopenia and aplastic anemia, individuals "exposed to benzene usually do not approach their physicians until late stages in the disease." (Ex. 156.2, p. 2.) As a result, the hematological picture before the onset of disease is often not known. Moreover, because of the well-known reserve proliferative capacity of the bone marrow it is possible that marrow damage may occur without being reflected in the peripheral blood. (Goldstein, Ex. 43B, p. 175; Wintrobe, Ex. 2-107, p. 676.) Olson acknowledged that alterations

in bone marrow activity can occur despite a normal blood count (TR. 2894). Moreover, Goldstein noted that some individuals may have significantly depressed blood values, and yet remain within normal ranges. For this reason, a pancytopenic response to hematotoxic agents may go unrecognized. Therefore, OSHA believes that the scientific evidence is insufficient for adoption of the hypothesis that a preceding prodromal blood syndrome is a necessary prerequisite for the development of benzene leukemia. In this regard, Goldstein in his testimony cautioned that benzene may act as a direct-initiator of a neoplastic response.

OSHA is also aware that in many instances, non-malignant blood disorders resulting from chronic exposure to benzene may be reversed by removal from benzene exposure. However, the apparent high degree of reversibility, as set forth in Jandl's review, is open to question as pointed out in the Health Effects section.

Furthermore, a most characteristic finding which pervades the published literature, is that physiologic factors which cannot be identified a priori, such as nutritional state, genetic constitution, variations in metabolism of benzene and exposure (both occupational and non-occupational) to other marrow depressants, and the variables of age and sex may act to modify the individual's response. (Browning, Ex. 31, pp. 26 ff; Shaw, Tr. 421; Snyder, Ex. 156, p. 2.) For example, Browning stated, "... [t]here is no doubt that both men and women differ markedly in their response to similar conditions of exposure." (Ex. 31, p. 2.) Therefore, unqualified identification of high-risk subgroups cannot be made at present. Because of these uncertainties, this standard is designed to protect the most sensitive as well as the more resistant members of benzene-exposed worker populations by limiting exposure to the maximum extent feasible.

It is, therefore, clear from an examination of the record that a determination of a precise level of benzene exposure which presents no hazard cannot be made and that the corollary question of whether a "safe" level of exposure to benzene exists cannot be answered. The agency is aware of and has examined scientific opinion and data submitted by industry that thresholds for carcinogens may exist. However, prudent public health policy requires a conservative course of action until such evidence is of a definitive nature.

In its conclusionary document the International Workshop also stated: "[t]he workshop discussed but could not agree on whether there was a concentration below which there would be no leukemogenic effect clearly attributable to benzene" (Ex. 17, p. 7). Kray-

bill testified that because there was not enough data at the lower part of the dose-effect curve, he was unable to estimate a "safe" level. As early as 1939, in presenting data on the effects of chronic benzene exposure including leukemia, Hunter stated: "It is doubtful whether any concentration of benzene greater than zero is safe over a long period of time." (Ex. 2-74, p. 354.) In 1974, the MAK-Werte Working Group stated, "... [O]n the proven carcinogenic (leukaemogenic) effects of benzene and the lack of quantitative measuring data in the low concentration ranges, it is not possible at this time to establish a MAC (maximum allowable concentration) which might be regarded to be without danger." (Ex. 2-58, p. 52.)

Goldwater testified that zero is the level at which there is no risk of getting cancer from benzene (Goldwater Tr. 2500).

Goldstein stated: "As we do not know what the safe level is, the standard would appear to me to be based, must be based on prudent medical approach, which is to keep it at the lowest feasible level" (Tr. 352).

Aksoy stated: "[F]or me, the permissible exposure limit for benzene should be zero. Where it is technically impossible to achieve this, the permissible exposure limit should be lowest possible" (Tr. 149). In OSHA's view, the demonstration of cancer induction in humans at a particular level is not in the regulatory context, a prerequisite to a determination that a substance represents a cancer hazard for humans at that level. Relying upon a substantial body of scientific opinion, OSHA has concluded that, when dealing with a carcinogen, no safe level exists for any given population. For example, the National Cancer Institute's Ad Hoc committee on the Evaluation of Low Levels of Environmental Carcinogens (1970) states:

no level exposure to a chemical carcinogen should be considered toxicologically insignificant for man. For carcinogenic agents, a "safe level for man cannot be established by application of our present knowledge." (Ex. 272, p. 1.)

Thus, OSHA takes the position that in promulgating a health standard for a life threatening hazard such as benzene-induced leukemia, the exposure limits be established on a conservative basis so that worker health is properly safeguarded.

From the point of view of choosing a safe level of exposure, therefore, the permissible exposure limit should be set at zero. However, based on the evidence in the record, it is OSHA's judgment that a zero standard for exposure to benzene is not technologically feasible. In fact, it is clear that certain quantities of benzene are present in the ambient environment as a result of natural phenomena and as artifacts

of human activity. While a permissible exposure limit equal to zero plus background would represent the lowest level theoretically possible, OSHA believes that the record shows such an approach is not feasible. Even if such a number could be determined, achieving a standard of zero plus background would require that exposure to benzene be effectively zero so as not to increase employee exposure above background levels. There has been no evidence presented that convinces OSHA that such a complete elimination of benzene in all industries can be achieved by existing or future technology. In determining the appropriate permissible level of employee exposure to benzene, OSHA relies in part on the record of this proceeding and in part on policy considerations which lead the Agency to conclude that, in dealing with a carcinogen or other toxic substance for which no safe level of exposure has been demonstrated, the permissible exposure limit must be set at the lowest level feasible. Such a determination involves a measure of subjective judgment which OSHA believes is justified by the nature of the hazard being dealt with, and the intent of the Act. Section 6(b)5 provides that the standards for toxic substances shall be feasible. That section specifically provides that:

In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

OSHA has determined that 1 ppm TWA, 5 ppm ceiling limit for 15 minutes is the level which most adequately assures, to the extent feasible, the protection of workers exposed to benzene. In making this determination, the Agency recognizes that many industries affected by this standard have already achieved this permissible exposure limit, in a good many of their operations. As shown below for worksites currently above these values, currently available engineering controls and/or modifications of work practices can effectively reduce employee exposure to below the 1 ppm TWA, 5 ppm ceiling. This might suggest that the lower permissible exposure limits could be established, if not for all, at least for some of the industries covered by the benzene standard. OSHA has considered the appropriateness of establishing lower permissible limits for those industry sectors which can achieve these lower limits. It is, however, difficult on the basis of the available evidence to make this determination. The benzene standard applies to a multiplicity of industries and exposures occur from such varying sources as leaks in closed systems to batch operations using solvents. Identification

of some operations with lower exposure levels is possible in some industries, but even for these industries exposure information is not available for all operations. Moreover, even where information has been furnished by particular employers as to exposure levels for operations in their plants, it is not possible with any degree of confidence to apply this information to operations of another facility in the same industry. There is a great deal of variability in the configuration of plants, and the physical location of operations within a plant varies from facility to facility. Finally, it is OSHA's view that different levels for different industries would result in serious administrative difficulties. Because of these widespread differences and diversity, OSHA has decided to apply to all affected industries a permissible exposure limit of 1 ppm. Several industrial situations have been examined in making this determination and are discussed below.

Oil and gas production work is conducted in outdoor open air environments with relatively low-benzene content (Tr. 1463) streams maintained in closed systems. (Tr. 1463). Employee exposures in producing operations are intermittent and extremely low (PC 33API Brief p. 141; Ex. 116). Evidence in the record indicates employee exposures ranging between 0 ppm and 2 ppm, with over 80% of the measurements below 0.25 ppm. (Tr. 1467, Ex. 116, Ex. 115.A.4, p. 8). Since the production of crude oil and natural gas occurs in completely enclosed systems, the only employee exposures result from leaking valves (P.C. No. 30) and, as already indicated, these exposures are minimal. Visual inspections can detect these malfunctions and correction can be accomplished largely through replacement of seals. Engineering controls in the form of "double sealed" or "canned" pumps could also be instituted to avoid the leaks.

Pipeline transportation of crude oil and refined products is primarily a closed system operation (Tr. 1460). Potential employee exposure may occur where the products are transferred by truck or rail. (Tr. 1471.) Other operations involving employee exposure are gauging, and sampling operations, all of which are of relatively short duration with minimal employee exposures (Tr. 1472). Measurements taken by industry indicate that most such exposures on an 8 hour TWA basis are below 0.5 ppm. (Ex. 115, A.1.) The only area in which exposures were shown to exceed the permissible exposure limit was in the additive handling operations in which benzene was being utilized as a diluent. Since benzene was not necessary to the process, it was being eliminated from that operation (Tr. 1473).

The unloading and loading of gasoline, crude oil, and other refined products from marine vessels results in limited exposure to shoreside personnel ranging between 0.01 ppm. to 0.82 ppm. with an 8 hour TWA of .2 ppm. (Tr. 2271.) The shoreside personnel's potential for exposure occurs during the connecting and disconnecting of the hoses and loading arms, an activity of limited duration. (Fuller Ex. 115, A.3, p. 4.) The unloading and loading of benzene from marine vessels, however, may result in higher employee exposures. The transportation by barge accounts for the majority of the total benzene transported. (A.D. Little, Ex. 5A, 4.24, 4.42.) The connecting and disconnecting, opening and closing of valves and the monitoring of fill levels are the typical operations in which employees will actively be involved. These operations are all of limited duration and, consequently, employees would spend little of their time involved in them. The remainder of the employees' time would be spent elsewhere removed from exposure. Therefore, work practice controls would be extremely effective in reducing employees' exposures to benzene during the unloading and loading of marine vessels. (A.D. Little Vol. 1, May 1977 p. 4.27.)

One methodology discussed to reduce exposure to vapors is a marine vapor recovery system (Fuller, Ex. 115-A.3). However, at the present time, questions concerning fire and explosion risk, and potential structural damage to barges have, not as yet, been adequately resolved.

The exposures measured during the unloading of gasoline at bulk terminals are low. Sexton, an industry spokesman, reported that the highest long-term samples on individual truck operators was 0.41 ppm., with the vast majority being below 0.2 ppm. (Ex. 115-A.10.) These terminals from which the exposure data was obtained represent examples of the various types of truck loading techniques and different physical characteristics of the terminals, such as loading rates, covered versus uncovered loading racks, and floating roof tops.

Data presented by Williams Pipeline also showed exposure levels, for the most part, below 0.5 ppm. on an 8 hr. TWA basis. It, therefore, appears that one or a combination of these available engineering controls will be sufficient to reduce employee exposure below the permissible exposure limit.

Approximately 94% of the benzene produced is derived from petroleum through the process of catalytic reforming, recovery from pyrolysis of gasoline and hydroalkylation of toluene. Many of the processes used to produce benzene involve completely enclosed units such as reactors. However, these processes do contain vents

and other sources of leaks, which can result in significant exposures (A. D. Little, Vol. II-B11).

Control of emissions can be accomplished by such activities as removal and reinstalling equipment such as pumps, compressors, machining of parts, cutting and welding of pipelines, fabrication of equipment, replacement of gaskets. Also, the use of automatic gauging devices, closed loop sampling systems, vapor recovery units, floating roof installations and rupture discs has been suggested (Ex. 5A, 4-53).

The majority of employees exposed at petrochemical plants are already within the permissible exposure limit. (Ex. 111-A, pp. 4-7.) At only four of twelve plants surveyed, exposures were above 1 ppm. (ADL May 1977 p. 10, Table 2), and of those four plants only two were above 5 ppm. The fact that eight of those twelve plants were already within the permissible exposure limit suggests that other plants can be rehabilitated with existing technology to achieve levels within 1 ppm.

The record indicated that exposures to benzene vary between 0.1 ppm and 20 ppm. (Com. 28, 31.) The differences in exposure levels appear to be due to the particular protective measures employed in the laboratory. (Tr. 3157, 3492-6.) On the basis of this evidence, OSHA has determined that the use of a properly operating laboratory hood is one available engineering control which is currently reducing employee exposures (See ADL 4-41) well below the permissible exposure limit. The type of control selected will be dependent upon the individual laboratory. (ADL May 1977 pp. 4-40 and 4-41.)

The two segments of the steel industry wherein benzene exposure occurs are the coke oven battery and the light oil distillation plants. Exposures at the coke oven batteries range between 0.02 ppm and 0.31 ppm. (Ex. 135 p. 4 and Attachment 2.) It is thus apparent that the steel industry's compliance with the Coke Oven Emission Standard will maintain benzene exposures well below the action level.

Within the distillation plants, equipment is used to distill the benzene out of the light oil. It is in this operation that the steel industries claim that in certain situations it will not be feasible to reduce exposures through engineering controls. It appears, however, that those situations are limited to the older "coke driven by-products plants" (between 30, 40, and 50 years old). (PC 36 AISI Brief, p. 87-88) and does not exist for the newer plants which currently have low exposure levels.

As the Courts of Appeals have emphasized, OSHA is not restricted to the status quo. Standards may be set which require improvement in existing technologies or which require the development of new technology and

OSHA is not limited to setting standards based solely on devices currently available, at least where new technology appears on the horizons to limit exposures below the permissible exposure limit. (See e.g. *Society of Plastics Industry v. U.S. Department of Labor*, 509 F. 2d 301 (C.A. 2, 1975) cert. denied.) Certainly here, the evidence indicates that technological controls to reduce exposures, if they are not universally used, do exist (Ex. 5A, 4-37).

Benzene exposure may occur in a variety of industries when solvents containing small quantities of benzene are utilized. Some examples are the rubber industry, the manufacture and use of adhesives, paint manufacturing and application, metal can production and commercial printing. Evidence in the record indicates that, with the exception of paint remover firms for the most part have restricted the use of benzene as a raw materials. It appears, therefore that the percent of benzene coupled with presently available engineering controls, such as local exhaust systems, results in minimal employee exposures. (May 1977 ADL p. 4-27, 4032).

Based on the record of the benzene rulemaking, OSHA has concluded, as indicated above, that the permanent benzene standard is technologically feasible. Furthermore, OSHA has determined that this standard better effectuates the purposes of the act than the national consensus standard for benzene.

Dermal and Eye Exposure Limits: Paragraph (c)(2). The final standard, like the emergency temporary standard and the proposed standard, prohibits all eye contact and skin contact with liquid benzene. This requirement is based on OSHA's policy that, in dealing with a carcinogen, all potential routes of exposure (i.e. inhalation, ingestion, and skin absorption) be limited to the extent feasible.

Although the record evidence does not conclusively establish what the effects of contact with benzene are on the eyes or the skin, participants generally did not oppose a requirement for restricting such contact. Indeed some participants indicated that they already provide protective clothing and equipment to their employees in order to protect them from possible hazards of contact with liquid benzene.

The record evidence on the effect of liquid benzene on the eyes or the skin is extremely limited. No scientific data as to the effects of benzene on the eyes was presented during the rulemaking proceeding. The few studies of skin effects on animals and humans (Ex. 2-46, 2-47, 2-48, TR 2459-90) are not definitive as to the extent of benzene that is absorbed through the intact skin or as to the comparative

rate of absorption through damaged skin (TR. 2469-70). Testimony as to skin absorption of benzene was given by NIOSH and by an industry expert witness. NIOSH's view is that benzene is readily absorbed through the skin although the extent of absorption in any particular exposure is unknown. NIOSH however, believes that in instances of an inflamed skin or when benzene is contained in a mixture a "considerable amount" can be absorbed (TR-860). Industry's witness stated that he had no personal view as to whether benzene is absorbed through the skin (TR. 2469) nor whether the rate of absorption of benzene was or was not increased where the benzene is a component of a solvent (TR. 2471-2). The witness also pointed out that he did not know the effect of multiple applications of benzene on the broken skin (TR. 2471). He suggested that additional studies be conducted to resolve these issues. This witness nevertheless testified that liquid benzene can damage the outermost protective layer of the skin (TR. 2470) and that, although there is no verifying data, "it is ordinarily assumed that penetration of any molecule will be greater through damaged skin than undamaged skin" (TR. 2469).

In order to assure that employees are adequately protected against all benzene hazards, it is OSHA's belief that it is appropriate to provide precautions against eye and dermal contact with benzene. In reaching this conclusion, OSHA has taken note that the threshold limit value for benzene adopted by the ACGIH for 1976, and the intended change of that TLV, bear a "skin" notation which refers "to the potential contribution to the overall exposure by the cutaneous route including mucous membranes and eye, either by airborne, or more particularly by direct contact with the substance. Vehicles can alter skin absorption. This attention-calling designation is intended to suggest appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated" (TLVs for chemical substance in Workroom Environment with Intended Changes for 1976, p. 5). OSHA further notes that maximum allowable concentrations of benzene in other countries also carry a "skin" notation.

OSHA has reviewed the various suggestions for changes in some of the requirements of the provision on eye and dermal limits. Some participants suggested that the provision apply to "liquid benzene" to make clear that the limitation did not apply to eye and skin exposure to benzene vapors (For example, see Com. 53). OSHA has adopted this suggestion since it was never intended that the provision apply to other than liquid benzene. Some comments suggested that the

limitation apply only to liquid benzene of a commercial grade or higher (Com. 48; Com. 76) so as to exclude solvents with trace amounts of benzene (Com. 59). There is no evidence, however, to suggest that the absorption rate depends on the amount of benzene present in the liquid (TR. 2472, 2482).

Regulated Areas: paragraph (d). The final standard contains requirements for regulated areas. The purpose of establishing regulated areas is to limit the exposure at above 1 ppm to as few employees as possible. The burden of the regulated area provision on the employer is expected to be minimal since the provisions require the employer merely to identify and control access to regulated areas and to notify the applicable OSHA area office of their existence and condition.

The standard requires that regulated areas be established where airborne exposures are above the permissible exposure limit and that access thereto be limited to authorized persons. Regulated areas must be established at all worksites where the permissible exposure limit is exceeded. Although transportation was not specifically listed in the proposed regulated area paragraph, the regulated area requirements of the permanent standard apply to the transportation of benzene, as well as to workplaces where benzene is produced, reacted, released, packaged, stored, handled or used. The scope of the regulated area subparagraph is, therefore, identical to the scope of the standard. This identity of scope has the result that, while the loading of gasoline at the bulk terminals may require the designation of a regulated area, the transportation of the gasoline from the terminals does not, in as much as that transportation activity is exempted from the standard.

Some participants misunderstood the regulated area requirement in the proposal and thought that regulated areas must be established even where exposures are below the permissible exposure limits. (Tr. 3136.) The standard, however, requires establishment of regulated areas only where exposures are above 1 ppm as an 8 hour time weighted average or 5 ppm averaged over a 15 minute period.

Some participants recommended that regulated area requirements not apply to laboratories (Ex. 6, No. 37, 70) or to coke oven batteries (Ex. 135; p. 2 PH; 36 AISI brief, p. 17). It is OSHA's view that existence of a hazard, rather than the type of operation, should be the basis for establishment of regulated areas. Therefore, if the exposures in laboratories or coke oven batteries were to exceed the permissible exposure limits, regulated areas would have to be established at those facilities. Moreover, OSHA feels that the burden is minimal compared to the protection afforded employees.

The standard requires that the OSHA area office be notified within 30 days following the establishment of a regulated area. Each employer must notify OSHA of the existence of any regulated areas within his establishment and of the conditions existing within such areas. Since regulated areas are required to be established only where exposures to benzene exceed the permissible exposure level, employers whose operations are all below that level need not file the report. This requirement is designed for compliance purposes. One comment suggested that OSHA should require, as it did in the Emergency Temporary Standard on Benzene, notification of the use of benzene in every workplace where it is present (Com. 62). It is clear from the record evidence that benzene is present in some amount or other in a vast number of workplaces and that, consequently, a notification of use provision would be administratively burdensome to OSHA and employers without necessarily resulting in more effective enforcement of the standard. For this reason, the final standard, as the proposal, requires merely the notification of regulated areas. Other comments suggested that laboratories and other small users of benzene be exempted from this notification provision on the ground that their use of benzene is infrequent (Com. 70) and that the filing of this notice by "big users" would be sufficient to set priorities for facility inspections. OSHA does not agree. The amount of benzene used by research and testing laboratories will vary from time to time depending on the projects being worked on. Finally, the suggestion presupposes that facility inspections would be conducted solely on the basis of the frequency of use of benzene. However, even where the use of benzene is infrequent, impairment of employee health may occur particularly where the exposure is above the permissible exposure limit. Other industry comments requested that employers be relieved of notification of regulated areas where temporary regulatory areas of short duration are established for maintenance work or for special projects or when leaks in closed systems occur (Com. 46, 50). In view of the hazardous nature of benzene exposure, OSHA deems it essential to require notification of regulated areas in all cases where employees are exposed above the permissible exposure limit. Moreover, in a facility where there are frequent leaks, the employer will be alerted by the necessity to report these leaks to the possible need to take additional measures to protect employees against such exposures. If the possibility exists that the permissible exposure limit will be exceeded from time to time, the maintenance of a regulated area at the lo-

cation of the leaks will, of course, minimize exposure and minimize the reporting requirement. Some industry participants recommended that the standard include a method for "deregulating" the regulated areas once exposures fall below the permissible exposure limits. (Com. 45, Com. 53, Com. 57) OSHA does not feel that a formal method for deregulation is necessary. Since the standard does not require maintenance of a regulated area except where exposures are above the permissible exposure limit, the regulated area requirement does not apply where the employer has reduced the exposure levels below the permissible exposure limit. Nor would a deregulation procedure contribute to the protection of employees. Moreover, if formal deregulation were required, it would be necessary for the employer to file an additional notification with the OSHA area office should conditions change thereafter and the exposure again exceed the permissible exposure limits. In view of these considerations, a formal deregulation procedure would appear to be unnecessarily burdensome.

Monitoring: paragraph (e). Significant changes have been made in the monitoring section of the final standard in response to comments by participants. Briefly, the final standard requires all covered employers to make measurements to determine whether any employee may be exposed to airborne concentrations of benzene, and imposes different measuring requirements depending on whether exposure measurements are above or below certain levels.

The monitoring requirements are imposed pursuant to Section 6(b)(7) of the Act (29 U.S.C. § 655) which mandates that any standard promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." The purposes of monitoring are to determine the extent of exposure, to identify the source of exposure to the hazard and to enable the employer to select proper control methods and evaluate the effectiveness of the selected methods. Thus, monitoring enables employers to meet the legal obligation of the standard to assure that their employees are not exposed to benzene in excess of prescribed levels. Additionally, monitoring enables employers to notify the employees of their exposure level, as required by section 8(c)(3) of the Act, and provides information necessary to the examining physician.

The need to conduct exposure monitoring was generally accepted by participants in the rulemaking process (P.C. 35MCA brief, p. 55-b; P.C. 36;

ORC brief, p. 7). Many comments, however, objected to the proposal's requirement to measure airborne exposures in all workplaces "where benzene is present" (P.C. 33; API brief, p. 127a; P.C. 34; ORC brief, pp. 7-8). Participants argued that the use of the term "present" is so broad as to encompass each and every employee at a facility (Ex. 6, No. 53). It was also argued that benzene is present in the ambient atmosphere (Ex. 6, No. 43; Ex. 84B, 18, Ex. 84A, p. 7) with the result that every work operation in every city would probably have to be monitored (Ex. 6, No. 43, p. 12). OSHA's objective is to minimize all occupational exposures to benzene. The term "presence" was used in the proposal to convey the intent that, whenever the exposure of any employee to benzene concentrations resulted from workplace operations at the place of employment, the employer was required to measure that exposure. OSHA does not intend that employees, who might be exposed solely from other sources, such as ambient levels of benzene, be covered by the monitoring requirements. In view of the confusion as to the meaning of the term "presence," the final standard does not use that term but instead specifies the general classes of occupational activities which can result in employee exposure to benzene, and requires monitoring where any of these activities are conducted.

In conducting the monitoring of exposures, the standard does not require that each individual employee's exposure level be measured. Although individual measurement is the ultimate indicator of employee exposure, OSHA believes that a requirement for individual measurements may be too burdensome. Accordingly, the standard requires that the measurements be made by monitoring which is representative of each employee's exposure to benzene over an eight-hour period without regard to the use of respirators. It should be noted that the requirement for representative monitoring does not preclude an employer from taking individual exposure measurements of each of his employees; individual measurements are certainly considered to be representative; and the representative monitoring requirement is the minimum that the employer must meet.

In establishments having more than one work operation involving the use of benzene, the monitoring to be representative must be performed for each type of employee exposure within each operation. One participant requested that area sampling be permitted in order to lessen the burden and cost of monitoring each employee with a different job function (Ex. 6, No. 49, p. 4). Although the final standard does not specifically require personal sampling, monitoring under

the standard must determine breathing zone exposures. Appendix B, IV, therefore, recommends that air sampling be taken in the employee's breathing zone. Area samples are generally not as direct a measure of employee exposure, and consequently, may not meet the requirement for representative monitoring, although where area sampling can be correlated with breathing zone exposures, area sampling may be used. OSHA, however, notes that while there are techniques to correlate area sampling with breathing zone exposures, these are generally more burdensome than personal sampling and involve much more sophisticated data collection and analysis, including the performance of personal sampling to assure the correlation.

Some participants suggested that employers with several places of employment, in which there are workplaces with identical processes or operations, be permitted to monitor only a representative number of such locations (Ex. 6; Ex. 50, p. 3; Ex. 60, p. 7). The fact that work operations are in different geographical locations would not in itself preclude representative monitoring. However, it is the employer's responsibility to assure that identification of conditions, characteristics, activities, climate, etc. exist so that monitoring at particular sites would actually be representative of employee exposure at other sites.

The employer is also required to use a method of monitoring and measurement with an accuracy (at a confidence level of 95%) of not less than plus or minus 25% for concentrations of benzene of 1 ppm or more. Methods of measurement are presently available to detect benzene to this accuracy level (Tr. 342-3) and one such method is described in Appendix A, II, E. Industry participants expressed concern that consistent compliance with these accuracy requirements will be impossible. (PC 36; AISI brief pp. 106-108.) The record, however, indicates that, even where benzene is present with other organic solvents, the OSHA Analytical Method will still enable employers to measure low levels of benzene well within the accuracy requirement of the standard. (Tr. p. 343.) Indeed, it was suggested at the hearing that there is an alternate method for sampling, passive dosimeters, which may comply with the accuracy requirements contained in the proposal. (Tr. 2381.)

As earlier indicated, the standard requires all covered employers to initially measure the airborne exposure of all of their employees. Some participants objected to this requirement and recommended that initial monitoring be limited to those workplaces where there is a probability of exposure to benzene in excess of the permissible

exposure limit (P.C. 36; AISI brief, pp. 73-74; P.C.34; ORC brief, p. 8) or in excess of 10 ppm (MCA brief, p. 50). It is OSHA's view that a "probability" is too speculative where a carcinogen is involved, and that a more definitive basis is needed for determining employee exposure. It is, therefore, OSHA's decision to require initial monitoring at any level of exposure to a carcinogen. Initial measuring of exposure is necessary for the protection of employees particularly where, as here, the permissible exposure level is not a "safe" or "no effect" level but is predicated upon feasibility. Moreover, initial monitoring does not place an undue burden on the employer since he need not continue the monitoring for those employees whose exposures are below the action level.

The standard requires that the initial monitoring be conducted and the results thereof obtained within 30 days of the effective date of the standard. Several comments requested that a longer period, ranging between two months (Ex. 176) to six months (P.C. 36; AISI brief, p. 75; TR 3137), be allowed for employers to meet this requirement. OSHA has retained the thirty day requirement. Since the final standard has a delayed effective date of thirty days after date of publication in the *FEDERAL REGISTER*, employers will have sixty days to comply with this requirement. OSHA feels that this period is sufficient to enable employers to secure sampling equipment, take samples, and obtain the results. Moreover, the standard permits employers, who have monitored within the last year, to utilize these measurements for purposes of compliance with the initial monitoring requirements, provided that the sampling and analytical method used meets the accuracy test of this standard and provided that the employer maintains a record of these measurements and notifies employees of their exposure levels. Employers who have already monitored their employees' exposures within this period will, therefore, not have to conduct initial monitoring unless, because of a process, control or personnel change, they are required to redetermine exposures. In addition, to the extent that the initial monitoring requirement cannot be complied with because of the unavailability of professional or technical personnel or of materials or equipment, the temporary variance procedures of the section 6(b)(6)(A) of the Act may be appropriately utilized. As noted, however, it is not expected that this will be generally necessary.

The frequency of monitoring employee exposure has been modified in the final standard. The proposal would have required monthly monitoring where exposures were above the permissible exposure limit and quar-

terly monitoring of those employees whose exposure was below that level. The final standard does not require employers to repeat the monitoring where the initial measurements are below the action level, unless there is some change in operations which might alter the exposures. Where the exposure measurements are above the action level but not in excess of the permissible exposure limit, the employer is required to monitor quarterly. Where initial or subsequent monitoring indicates that exposures are above the permissible exposure limit, the employer must monitor monthly. In developing these requirements, OSHA has given serious consideration to the numerous suggested modifications of the proposal's requirements. These ranged from suggestions to lessen the frequency of repeated monitoring to suggestions that monitoring frequencies should depend on whether the process is stable or highly variable (Ex. 6, No. 40), or should be based on performance variables, such as frequency of use, quantity used (Ex. 6, No. 70) and engineering controls (Ex. 6, No. 12, No. 43), or should be at the discretion of a professional (Ex. 6, No. 43). Some participants objected to periodic monitoring where initial monitoring reveals exposures below the permissible exposure limit (P.C. 36; AISI brief, p. 76; Com. 36, 10, 37). OSHA agrees that periodic monitoring is not necessary where exposures are shown to be below the action level. Accordingly, OSHA has eliminated the repeat monitoring requirement for operations below the action level. Where initial measurements are above the action level but do not exceed the permissible exposure limit, periodic monitoring is necessary to assure that exposures remain within that range and do not rise to above the permissible exposure limit. OSHA believes that quarterly monitoring is sufficient to detect substantial changes in exposures and to assure that employee exposures remain below the permissible exposure limit. Some participants objected to monthly monitoring where initial measurements are above the permissible exposure limits (P.C. 36 AISI brief, p. 76, Ex. 6, No. 50). Their rationale is that repeat monitoring serves no purpose since the hazard has already been identified (Ex. 170). They argued that the requirement to establish regulated areas where exposures are above the permissible exposure limit is a sufficient incentive for employers to remonitor a workplace as soon as they believe that the exposure has been reduced (P.C. 36 AISI brief, p. 76-7). As previously pointed out, monitoring serves other purposes than initial determination of employee exposure. Monitoring is a check on the efficiency of engineering controls: increased levels alert the employer to

the need to check and possibly alter these controls. Increases in benzene levels may also necessitate changes in types of respirators. Exposure measurements remind employees and employers of the continued need to protect against hazards, and are also useful to the examining physician in determining whether the exposed employee is at an increased risk. OSHA, therefore, is of the view that repeated monitoring, where initial measurements are above the permissible exposure limit, is necessary to protect employees. Other participants expressed the view that this monitoring should be less frequent than monthly—that is, should be quarterly (P.C. 31 ORC brief, p. 9; L.C. 3); semi-annually (P.C. 36 AISI brief, p. 78; Ex. 6, No. 57), annually (Ex. 6, No. 59, No. 76), or as frequently as significant changes are believed to have occurred (L.C. 19). In view of the leukemogenic hazard of exposure to benzene, it is OSHA's view that monthly monitoring, where exposures are above the permissible exposure limit, is necessary to protect the health of exposed employees.

The final standard also provides that employers may discontinue monitoring for those employees for whom two consecutive measurements taken seven days apart show exposures to be below the action level. Where employee exposure measurements fall below the permissible exposure limit but are at or above the action level, the employer may alter the monitoring schedule for those employees from monthly to quarterly after two consecutive measurements taken seven days apart indicate the reduction in levels.

The standard further requires that, whenever there has been a production, process, control, or personnel change which may result in new or additional employee exposure, or whenever the employer suspects that a change of employee exposure may occur, the employer must repeat the required monitoring. Redetermination of exposures in such instances is necessary so that the employer may take the necessary action to protect his employees, such as providing appropriate respiratory equipment, or instituting engineering controls. Redetermination is required only where there is a new exposure or an increase in exposure levels is suspected (Ex. 6, No. 76, No. 50). The required redetermination where there is a change of personnel was added to the final standard in view of evidence that exposure levels can change when different employees perform the work (Tr. 3093). This requirement does not mean, however, that the employer must remonitor every time there is a personnel change but he must redetermine exposures when the work practices of the substitute employee are such that an increase in exposure may

result. Redetermination of exposure must also take place after the cleanup of spills and the repair of leaks, ruptures or other breakdowns. One comment suggested that redetermination not be required in these instances (L.C. 19). OSHA has not adopted this suggestion. Spills, leaks, etc., can result in very high exposure levels (Tr. 1299; P.C. 30, p. 48), and the requirement to redetermine exposures after cleanup or repair provides one method of ascertaining that proper corrective methods have been instituted and employee exposures are not significantly altered.

The final standard further requires that employers notify each of their employees of the exposure measurement which represents that employee's exposure. This requirement is discussed in detail under Recordkeeping.

It should also be noted that paragraph (m) of the standard requires the employer to allow employees or their designated representatives an opportunity to observe the monitoring. The specific provisions of paragraph (m) are discussed below.

Methods of compliance: paragraph (f). The final standard, as the proposed standard, requires employers to institute engineering and work practice controls to reduce employee exposure to benzene to or below the permissible exposure limits, except to the extent that such controls are not feasible. This requirement is in accord with OSHA's policy that feasible engineering and work practice controls must be used as the primary methods of reducing employee exposures. This policy is based on the view that the most effective means of controlling employee exposures is to contain concentrations at their source through use of mechanical means combined with work practices rather than reliance on the variability of human behavior so critical to the successful use of respirators. Thus, the standard also provides that, in situations where feasible engineering controls and work practices are insufficient to reduce exposure to the permissible limits, the controls must nonetheless be used to reduce exposures to the lowest achievable level, and then be supplemented by the use of respiratory protection.

In reaching the decision to require engineering and work practice controls, as the primary methods of reducing benzene exposures, OSHA has carefully considered the objections of various participants. While recognizing that in many situations engineering and work practice controls are the preferred methods of reducing exposures to or below the permissible levels, several participants recommended that the hierarchy of control measures be eliminated and employers be allowed the freedom of selecting the control measure to be instituted. (Tr. 3140).

These participants particularly objected to the requirement that engineering controls and work practices be used to reduce exposure to the lowest achievable level even if that level is above the permissible exposure limit. Various arguments were made in support of this position. One participant pointed out that, where the controls will not reduce exposures sufficiently, respirators will have to be used anyway. This employer suggested that OSHA mandate the continued search for controls which are sufficient to reduce employee exposure, but allow employers to select any appropriate method of reducing exposures (Com. 43). As was pointed out in the benzene hearing (Ex. 59, p. 12), as well as in other OSHA rulemaking proceedings, respirators are the least satisfactory means of control because of difficulties inherent in their design and use. Respirators are capable of providing good protection only if they are properly selected for the types and concentrations of airborne concentrations present, properly fitted and refitted to the employee, worn by the employee, and replaced when they have ceased to provide protection. While it is theoretically possible for all of these conditions to be met, it is more often the case that they are not. Consequently, the protection of employees by respirators is not always effective and is, therefore, permitted only in certain specified circumstances. For example, proper facial fit, is essential but, due to variations in fit, individual facial dimensions and the limited range of the facepiece configurations, such fit is difficult to achieve. (Tr. 332-335) Often the work involved is strenuous and the increased breathing resistance of the respirator reduces their acceptability to employees. Safety problems presented by respirators must also be considered. Respirators limit vision. Speech is also limited. Voice transmission through a respirator can be difficult, annoying and fatiguing. Movement of the jaw in speaking also causes leakage. Communication may make the difference between a safe efficient operation, on the one hand, and confusion and panic, especially in difficult and dangerous jobs, on the other hand. Moreover, skin irritation can result from wearing a respirator in hot, humid conditions and such irritation can cause considerable distress and disrupt work schedules. It is clear, therefore, that respirators cannot be considered as the primary means of employee health protection. Nevertheless, respirators do provide some protection and OSHA has concluded that under certain limited circumstances, where no alternatives are available, respirators may be used to reduce employee exposures.

Industry participants further argued against a system of priorities because

of alleged unfeasibility of engineering controls. Most of these participants' objections to methods of compliance, however, lie in the area of economic rather than technological feasibility (Com. 49, p. 5; Com. 54, p. 2; Com. 73, p. 3). As discussed below, OSHA has determined that this standard is feasible and that the implementation of engineering and work practice controls is for the most part technologically feasible. However, OSHA realizes that, under some particular circumstances, engineering and work practice controls may not be technologically feasible in a particular work operation. Therefore, the standard explicitly recognizes that an employer may demonstrate the infeasibility of engineering and work practice controls as to one or more operations in a particular process, and in these circumstances use respirators to provide the required protection. The question of whether an employer has met its burden of establishing that engineering and work practice controls are infeasible in a particular work operation involves the consideration of many complex factors and a rational balance process. Factors such as levels of exposure, useful remaining life of the equipment and the effort made by the employer to implement such controls are relevant.

In addition to the obligation to institute engineering and work practice controls, except to the extent that such controls are not feasible, the final standard also requires that each employer establish and implement a plan, including schedules for reducing exposures to within the permissible exposure limit or to the greatest extent feasible, solely by engineering and work practice controls. These written plans must be furnished upon request for examination and copying to representatives of the Assistant Secretary and the Director. These plans must be reviewed and updated periodically to reflect the current status of exposure control. Some participants felt that the requirement for written plans was burdensome and unnecessary (Com. 45, 59). OSHA, however, views the requirement for written plans as an essential part of the compliance program since it will encourage employees to actually achieve the controls and also provide the necessary documentation to OSHA, employers and employees of the compliance methods chosen, the extent to which controls have been instituted and plans to institute further controls to achieve safe and healthful workplaces.

A compliance issue relating to the requirement for engineering controls and work practices in this final benzene standard involves the relationship of that requirement to the covered employers' legal obligation as to engineering controls under the prior

benzene standard (29 CFR 1910.1000, Table Z-2). The new standard, at paragraph (f)(1), requires the implementation of engineering controls and work practices. OSHA views the two standards as a continuum of enforceable obligations which have been crystallized in the standards promulgation. More specifically, in evaluating whether the employer has instituted controls, OSHA compliance personnel would consider not only the employer's performance under the new standard but also his prior obligation under its predecessor.

Respirator protection: paragraph (g). The final standard contains requirements for respiratory protection. The standard requires employers to provide and assure the use of respirators whenever the permissible exposure level is exceeded. Paragraph (g) makes clear, however, that respirators are only to be used when other means of control are not feasible, and that the use of respirators is not a substitute for engineering and work practice controls. The standard allows respirators to be used to achieve compliance with the permissible exposure levels only in certain specific situations. The reason for the limitations is that respirators are, as stated above, the least satisfactory means of exposure control.

The standard contains a respirator selection table to enable the employer to provide the type of respirator which affords the proper degree of protection. While the employer must select the appropriate respirator from the table for each work operation on the basis of the airborne concentrations of benzene, he may always select a respirator providing greater protection—that is, one prescribed for higher concentrations of benzene than present in his workplace. It should also be noted that OSHA does not anticipate, as previously suggested in the proposal, that a conflict between the respirator selection table of the benzene standard and that of the coke oven standard will arise. Industry data (Ex. 136, attach No. 2) indicates that benzene exposures at coke oven batteries are generally below 1 ppm and respiratory protection for benzene exposure will generally not be required.

The standard further requires that the employer select respirators from among those approved by NIOSH under 30 CFR Part 11. Participants pointed out (Com. 41; Tr. 752; Tr. 139) that, although the standard's respiratory selection table permits the use of chemical cartridge respirators for concentrations of 50 ppm or less, NIOSH does not approve chemical cartridge respirators for benzene. OSHA is well aware of the fact that NIOSH does not approve organic vapor cartridge or canister respirators for substances, such as benzene, with poor warning

qualities and that such respirators do not generally have end-of-service life indicators (Tr. 140). The standard's requirement for NIOSH approval, however, is designed to assure that only devices approved and certified by NIOSH for use against organic vapors be used, notwithstanding the fact that such certification carries a stated or implied prohibition against the use of these devices for substances with poor warning properties. The alternative would be to chance employee protection by allowing use of non-approved devices, or to require supplied air respirators or self-contained breathing devices which in many cases would give rise to extreme operational difficulties (Tr. 142). Since organic vapor cartridge and canister respirators currently approved by NIOSH have been shown to be effective in absorbing benzene vapors, neither of these alternatives is necessary.

To compensate for the lack of adequate warning properties of these respirators, the standard requires frequent replacement of the cartridge or canisters (Tr. 140). The standard requires that the cartridges or canisters be changed at the end of their service life or the end of the shift in which they are first used, whichever comes first. Some participants objected to the requirement to replace air purifying canisters and cartridges at the end of the shift. They felt that it would lead to waste (Com. 40), would do little to encourage research and development of an end of service life indicator (Com. 41), and would be too frequent where benzene concentrations are low and cartridge life is long (Com. 65). Recommendations for longer periods varied (Com. 53; L.C. 3; L.C. 19; Com. 60). OSHA has considered these recommendations but has concluded that, in order to assure that employees receive the maximum protection from benzene vapors, cartridges or canisters must be changed at least at the end of each shift. Should NIOSH, at some later date, certify a benzene end of service life indicator, which demonstrates that the canister or cartridge is useful past the end of the shift, OSHA would allow the cartridge or canister to be used for the extended period. Accordingly, the final standard has been changed to make this clear and hence encourage research and development of an end of service life indicator for benzene.

The standard further requires that the employer institute a respiratory protection program in accordance with 29 CFR 1910.134. This section contains basic requirements for proper selection, use, cleaning and maintenance of respirators. The employer is also required to assure that the respirator is properly fitted and to allow employees to wash their faces and respirator face pieces. In addition, paragraph (j)(1) of

the standard requires that employees be properly trained in the use of respirators.

The standard requires that the employer shall provide respirators and other clothing and equipment required for protection from exposure to benzene at no cost to the employee. OSHA has allocated the costs of respirators and clothing and equipment required for protection from benzene exposure to the employer in order to effectuate the purposes of the Act. The employers' costs in providing respirators and protective equipment and clothing were considered in the economic assessment. This language clarifies OSHA's position which has long been implicit in health standard proceedings under section 6(b) of the Act.

Protective Clothing and Equipment: paragraph (h). The final standard retains the requirement that, where the employee is exposed to eye contact or repeated skin contact with benzene, the employer must provide and assure that employees wear the appropriate protective clothing and equipment. This requirement compels employers to furnish, where necessary, such items as goggles, face shields or gloves, or footwear.

The available scientific evidence on the intact and unbroken skin has been discussed above under Dermal and Eye Exposure Limits. Although the evidence on skin absorption of benzene is inconclusive, it is an "undisputed assumption" that the penetration of any benzene molecule will be greater through damaged skin (Tr. 2469-70). The record evidence also indicates that there are situations where employees are immersed or drenched with benzene liquids (Tr. 289, 292, 299). Liquid benzene on the skin may cause erythema and blistering, and dry scaly dermatitis may develop on prolonged or repeated exposure (Ex. 2-3). Burns may occur from benzene spills (Tr. 292). One purpose of the protective clothing and equipment requirement is to protect employees from dermatitis and burns. Additionally, since benzene is a carcinogen and since breaks in skin surfaces commonly occur, OSHA has concluded that it is necessary to require personal protective clothing and equipment although the full effect of liquid benzene on the eye and the skin is as yet unknown. To do otherwise would be to leave employees unprotected and expose them to what might ultimately be shown as a most serious hazard.

Few comments were received on the protective clothing and equipment requirements. Some participants indicated that they already provide such protection to their employees (L.C. 4). One participant suggested that the extent of body exposure, which would trigger the need for the protective clothing, be delineated in the stan-

dard. (Com. 55.) OSHA, however, believes that the likelihood of eye or repeated skin contact and the resultant need for protective clothing must be assessed on the basis of individual workplace operations. One comment objected to the need for protective clothing or equipment where 1 percent or less benzene is present in the liquid benzene. There is, however, nothing to indicate that such percentages would create a sufficiently reduced hazard to warrant total elimination of the requirement.

The final standard requires the use of "impermeable" protective clothing and equipment. This requirement was in the emergency temporary standard. The proposal, however, would have simply required "appropriate protective clothing and equipment." Where eye and skin protection are required, the protective clothing and equipment to be "appropriate" must not allow liquid benzene to reach the eyes or skin. To make this clear, OSHA has adopted the language of the emergency temporary standard. The impermeable clothing must prevent all penetration of benzene. Thus, where impermeable gloves are used, liquid benzene should not seep through the cuff or any other opening in the glove. This could very well increase the hazard to the employee. It appears, on the basis of testimony from the industry expert witness, that, when a chemical substance on the skin is covered with a totally inclusive material, the rate of permeability of the substance through the skin is greatly increased (TR 2464; 2473).

HYGIENE FACILITIES

Although normally required in carcinogen standards (See Coke Oven and Cancer Policy), the final benzene standard does not contain any requirement for hygiene facilities, such as waste disposal, housekeeping, showers, change rooms, or laundering of clothing.

The question of what, if any, hygiene facilities should be included in the final standard was at issue in the benzene rulemaking proceeding. The most common view of participants in that proceeding was that hygiene facilities were not necessary because of the volatility of benzene (L.C. 19). Almost all participants felt that no hazard would be created by the absence of hygiene facilities. One witness, however, testified that, in his opinion, the wife of a benzene exposed employee, who laundered her husband's work clothes daily died from benzene induced leukemia (Tr. 314). Unfortunately, no further information concerning this case was furnished. OSHA, consequently, finds that the record does not establish the need for a requirement for hygiene facilities.

Medical surveillance: paragraph (i). This standard requires that employers

make available a medical surveillance program for those workers who are exposed to benzene at or above the action level of 0.5 ppm TWA. In addition, the regulation contains an emergency provision for the biological monitoring of employees exposed to a massive release of benzene.

Evidence contained in the record clearly indicates that a medical surveillance program is an appropriate measure. Hematologists, company physicians and other participants have recommended the inclusion of a medical surveillance provision in the final standard (Ex. 106; P.C. 30; Ex. 211; Ex. 17, Ex. 179, Bommarito, Tr. 3382). Also, a review of the record discloses that it is a current common practice of many industries to routinely examine their employees for evidence of benzene toxicity. (e.g. Wodka, Tr. 1263; Com. 26; Joyner, Tr. 2286; Dow, Tr. 2967, 3021; Ex. 77H.)

Section 6(b)(7) of the Act requires that employers make available medical examinations to ascertain whether the health of workers is adversely affected by exposure to toxic substances, where appropriate. The requirements contained in this regulation are designed to detect changes in the hematopoietic system resulting from chronic exposures to benzene which may be manifested in a range of blood disorders, including leukemia.

It is widely recognized that the major target organ in chronic benzene toxicity is the hematopoietic system, especially the bone marrow. This system has the attribute that a sample of the peripheral blood offers a unique biological "window" on the functioning and health of this system, providing much direct visual information not readily available for other organs or systems.

It is OSHA's view that a medical surveillance program directed toward the early detection of hematopoietic dysfunction by examination of peripheral blood samples is an appropriate measure. This determination receives support from: (1) Studies showing that early blood dyscrasias have been detected in workforces screened by laboratory tests (and often in workers displaying no obvious physical symptomatology) (Greenburg, Ex. 2-8, p. 419; Savilahti, Ex. 2-95, p. 1; Goldstein, Ex. 43B, p. 138); and (2) that even in cases of acute myelogenous leukemia, a period of remission, unfortunately brief, may be effected in a substantial proportion of those afflicted with this fatal disease by appropriate treatment. (ORC/Jandl, P.C. 34, p. 73-74). OSHA's decision is also supported by evidence that some cases of benzene-induced blood disorders may be reversed upon cessation of exposure and by appropriate treatment. (ORC/Jandl, P.C. 34, p. 39).

The medical surveillance provision of the proposed standard was the

object of much comment and testimony. For example, over 45 separate comments addressed this issue in pre-hearing submissions alone. Additionally, substantial testimony was adduced during the hearing, and additional views were submitted to OSHA in the form of post-hearing comments. These suggestions addressed both the content and frequency of the examinations as well as what information should be elicited from the medical/work history portion.

OSHA, in formulating the provisions of the medical surveillance section, was aware of several problems. While there is no disagreement that the blood tissues are the most important organ relative to chronic benzene toxicity, there are as yet no consistent patterns of abnormalities, especially at low exposure levels, and no specific pathognomonic tests of benzene toxicity (Rosen, PC 23A, p. 2). Compounding this problem is the fact that it is difficult to separate cases of early benzene hemotoxicity from more common minor blood disorders (Goldstein, Tr. 354). Associated with the problems of exam content is one of testing frequency. There are simply no precise estimates of the time course of the various abnormalities to allow determination of optimal testing frequency. Opinions based upon the lifespan of the blood cells are equally inapplicable in determining the frequency of such exams (Battle, P.C. 26C). While realizing that the more frequent the exams the greater the probability of detecting blood disorders induced by benzene, OSHA is also aware of the practical considerations of a medical surveillance program. Unlike the coke oven standard which applies to a defined number of workers employed in well characterized work sites, benzene is a component (usually as a contaminant) of a wide variety of refined petroleum solvents and, therefore, some benzene exposure occurs in a myriad of work sites and work operations. OSHA also recognizes that to be effective a medical surveillance program must be acceptable to a majority of workers subjected to the examination, the tests must display a high degree of accuracy and reproducibility, and the program should be able to be performed in a routine manner without unduly taxing medical resources. Given the above facts, the prescribed medical surveillance program is designed to accommodate the purpose of detecting early blood disorders resulting from benzene exposure without being overly burdensome and unduly intrusive.

The medical surveillance program consists of three main elements: (1) An initial and periodic examination for all those employees exposed to airborne benzene concentrations at or above the action level, (2) evaluation of ab-

normal findings by a hematologist and, (3) a biological screen for workers who may have received excessive exposure as a result of an emergency.

Several commentators and hearing participants recommended to OSHA that the medical screening program should be, in some way, related to employee exposure, and several specifically suggested that an action level be utilized as the determining boundary. (Com. 10; Com. 21; Com. 26; Com. 36; Com. 46; Com. 47; Com. 53; Com. 70; Com. 72; Com. 76; L.C. 3; PC 36; AISI brief.) Many others felt that routine medical surveillance applied to all workers exposed to benzene without regard to degree of exposure, as was specified in the proposed standard, was an excessive requirement (e.g., Ex. 6-36). OSHA has examined these analyses and, as a result, has significantly altered the content of the surveillance program in the final standard. Furthermore, it is OSHA's view that the requirements of the medical surveillance program cannot be left to discretion of the examining physician because some physicians may not be fully aware of the wide range of effects resulting from benzene exposure.

The final standard requires that employers must make available an initial and periodic examination to any worker exposed at or above the action level. While it is the Agency's position that there is no "safe" level for benzene exposure, OSHA believes that the vast majority of workers exposed below the action level will not manifest blood dyscrasias, while those at or above this value are at greater risk, the precise extent of which is unknown. The inclusion of an action level concept will therefore limit medical surveillance requirements for those employees as to whom the probability of identifying benzene-induced blood disorders is in all likelihood minimal, and will focus such efforts on a population at increased risk.

INITIAL EXAMINATION

The initial examination has two components: a medical/work history and a series of laboratory blood tests. This differs from the proposed standard which drew no distinctions between initial histories and examinations and subsequent ones. The final standard does, however, make such a distinction. The purpose of the history is to alert the physician to problems which may indicate an individual's increased sensitivity to benzene. The permanent standard requires the taking of a history with the data elements specified in the proposal.

Eli Lilly (Com. 28) and Dupont (Com. 46) generally agreed with the proposed history requirements, while Dow Chemical agreed with the intent, i.e., that a complete medical history with an emphasis on blood problems is

an essential part of a benzene medical surveillance program. They felt, however, that the wording should be simplified so that the worker could supply the information him/herself with minimal professional assistance. (Ex. 154.) OSHA, recognizing the merits of this suggestion, has not chosen to mandate the precise wording of the history taken, but only to require that specific areas should be queried. The employer, therefore, has considerable latitude with respect to the actual format. Whether the employee answers the medical history or is questioned by a health professional is also left to the discretion of the employer. The standard does require, however, that all aspects of the medical surveillance program be under the supervision of a licensed physician.

One hematologist objected to the inclusion of questions pertaining to a family history of hematologic neoplasms, noting that there is little evidence associating these disorders with a predisposing increased sensitivity to benzene (ORC/Jandl P.C. 34, Add. 5, p. vii). Another hematologist also criticized this provision on the basis that the information obtained was both unreliable and of unknown relevance to benzene toxicity (P.C. 26C). Jandl also stated that genetically related hemoglobin alterations (hemoglobinopathies) are not highly relevant and are therefore of no predictive value (ORC/Jandl, P.C. 34). OSHA agrees that there is no known or even suspected association of benzene-induced blood dyscrasias with some hemoglobinopathies such as sickle cell anemia. However, Aksoy has reported findings that individuals with thalassemia (another hemoglobin disorder) may be more sensitive to the hematotoxic effects of benzene (Ex. 44). (It is not clear from Aksoy's testimony whether or not thalassemias are at greater risk of developing leukemias resulting from benzene exposure.) Moreover, he also observed a familial link with leukemia resulting from benzene exposure. (Ex. 24). In view of Aksoy's findings, OSHA believes that it is appropriate that the questions in the medical history relating hemoglobinopathies and a family history of malignant blood diseases remain in the standard.

Battle recommended that the health history also include questions concerning possible exposure to marrow toxins, such as the use of insecticides and volatile cleaning agents in the home (P.C. 26C). Since exposure to these types of agents may have significant impact on the blood picture of examined workers, queries regarding exposure to other marrow toxins both in and outside of the work environment have been added to the history requirements.

The initial laboratory examination requires that a series of classical blood

tests and also measurements of serum bilirubin and reticulocyte count be performed. As noted, there is no consistent pattern of blood abnormalities resulting from benzene exposure. Various investigations claim that the earliest sign of benzene hematotoxicity is anemia or leukopenia, or changes in red cell indices. Some believe that red cell enlargement (macrocytosis) (Goldstein, Ex. 75; Goldwater, Ex. 140) or an absolute lymphopenia (Goldstein) may be suggestive of early marrow damage. (Occasional observations of a paradoxical hypercellularity in response to benzene exposure have been reported, e.g., by Aksoy; however, the basic hematological workup should detect this particular response).

An examination of the record demonstrates that there is general agreement that the following laboratory hematological tests should be part of an initial or baseline examination:

- (a) Red Cell count
- (b) White Cell count
- (c) Hematocrit
- (d) Hemoglobin
- (e) MCV—(mean corpuscular volume)
- (f) MCH—(mean corpuscular hemoglobin)
- (g) MCHC—(mean cell hemoglobin concentration)

These tests are routinely performed in most blood examinations; they provide basic information about all three blood cell lines. The normal values are well known, and the tests are usually automated with the attendant benefits of being highly reproducible and accurate.

Differential counts of white blood cells, also required by the standard, are not amenable to automation and are therefore performed manually under microscopic examination by trained technicians. Battle commented that white blood cell counts are no longer performed on a routine basis in his clinic and that such an assay is usually only performed in response to abnormal cell counts (P.C. 26C). However, other commentators have recommended the inclusion of a differential count as part of a basic hematologic examination (both the initial and interval tests) (ORC/Jandl, P.C. 34, pp. 46-51, Goldstein Ex. 75). In addition to providing information on the relative number of various white cell types, the differential count provides an opportunity to observe aberrant cellular morphology and to note any unusual proportions of immature cells. Jandl feels that scanning of the slide by a trained technician for these types of findings is of the utmost importance (ORC/Jandl, P.C. 34, p. 45). For the above reasons, a differential count is a required part of the laboratory examination. In addition to the basic laboratory tests, serum bilirubin and reticulocyte counts must also be done in the initial laboratory exam. These tests may provide information indicative of

hemolytic states and other abnormalities. Because of the non-specificity of these two assays relative to benzene toxicity, the time-consuming nature and instability of the reticulocyte preparations, these particular tests were the object of much comment and criticism. Several commentators stated that although these tests were of little value on a routine basis, they should be made part of a preplacement or baseline exam (Com. 28, 72). Based on a review of this issue, OSHA believes that these two particular blood examinations should be included as a part of the initial laboratory tests only, to provide a more comprehensive picture of a worker's hematological profile, for possible later comparative purposes.

Several hematologists stressed the importance of obtaining pre-exposure data as a baseline against which latter comparisons could be made (ORC/Jandl, P.C. 34, p. 36; Battle, P.C. 26C; Goldstein Ex. 75, p. 5). The initial exam requirement of the standard applies to both employees already exposed to benzene at or above the action level as well as to new or reassigned employees who may be exposed at or above the action level. In the first case, the blood data obtained is not, of course, a true non-exposed baseline, but may be useful at a later date should significant changes in blood values occur. In addition, since the standard requires that an initial laboratory exam be performed for all new or reassigned employees prior to their actual exposure to benzene at or above the action level, pre-exposure baseline data will gradually become increasingly available in the years subsequent to promulgation of this standard.

As an aid to physicians for comparing the results of the most recent blood testing with early data, the recordkeeping paragraph requires that, at the completion of the differential count, the slide of a peripheral blood smear be made permanent and stored for possible future reference. Retention of the slide allows the examining physician to directly compare the most recent findings with earlier ones, especially with respect to possible changes in morphology of the blood cells; counting data alone would not permit this type of comparison.

Doc Chemical suggested that kidney and liver function tests should be performed as a part of the preplacement examination (Tr. 2967). OSHA recognizes that these laboratory examinations may identify conditions indicative of an impaired ability to detoxify benzene. However, given the low permissible exposure limit mandated by this standard, OSHA concluded that requirement of these tests would be excessively burdensome. In this regard, Goldstein testified that he saw no value to incorporate these tests (Tr. 380).

PERIODIC EXAMINATION

The medical surveillance section requires that a brief updated history be taken semiannually at the time of one of the blood examinations. Battle suggested that such a history include queries as to exposure to drugs or chemicals as well as recent illnesses since the last history (P.C. 26C). Because these agents may act to adversely affect the hematopoietic system and may be reflected in the blood picture, OSHA agrees with these particular suggestions and has incorporated all of them into the requirements for the interval history.

The periodic laboratory tests are similar to those specified for the initial exam, except that serum bilirubin and reticulocyte assays are deleted since, as stated above, the two assays are required only in establishing a baseline. Comments received by OSHA concerning the frequency of interval blood examination ranged from quarterly (ORC, P.C. 34, p. 11; Tr. 3382, Tr. 270) to 3 times a year (Com. 28; Tr. 3328; Battle, P.C. 26C), semiannually (Tr. 3138) to those who felt the frequency should in some manner vary according to the exposure level (e.g., Tr. 2965, 6-10, 6-37, 6-47, 6-64, 6-76, 41-3, 41-19). Dow expressed the view that the frequency should be the decision of the responsible physician and related to the medical condition of the employee and the environmental control of the specific work area (Tr. 2965). As detailed previously, there is insufficient information in the record to allow a precise determination of optimum testing frequency. No completely reliable information exists on the number of months which elapse between the first laboratory signs of a blood disorder and the onset of clinical disease or what effect a particular time delay has on therapeutic outcome. There is no reason for casualness about the testing frequency though, since even if a blood change were to progress steadily downhill, early detection and treatment may provide substantial benefit. It is OSHA's judgement, following examination of the various options available, that a six month interval between routine blood examinations is appropriate.

The standard contains a provision, applicable to both the initial, periodic and emergency exams, requiring that employees' abnormal test results must be referred to a hematologist for further evaluation should certain specified warning signs appear. This provision, which was not a part of the proposal, is in response to recommendations that: (1) A hematologist be included in some manner in the medical surveillance program (ORC/Jandl, P.C. 34); (2) specific quantitative guidelines including ranges (Ex. 6-60) be given physicians and; (3) that addi-

tional laboratory tests should be given if an abnormal count becomes manifest or significant changes occur relative to baseline values (NPRA, Tr. 3325-3331; AISI, Tr. 3263-64; ARCO, P.C. 32C). With respect to item (1), an industry participant testified that it was already the practice at his company to refer workers to hematology specialists if blood abnormalities are discovered (Joyner, Tr. 2286-87), and Dow remarked that they discussed abnormal blood findings of workers with the hematologists (Tr. 3021). Also Arco commented that, if abnormal conditions arise among its employees exposed to benzene, follow-up examinations are given and medical treatment performed until blood tests reveal values within the normal range (P.C. 32C). Also, Dow disclosed that, for its employee exposed to benzene, an increased medical surveillance program would result if conditions such as an undiagnosed anemia or leukocytosis were detected (Tr. 2984-85). Sakol has noted that ineffective and inappropriate medical treatment was given to workers apparently suffering hematological disorders from benzene exposure which ultimately evolved into a frank leukemia (Tr. 303). This incident further illustrates the need for a specialist's evaluation, if abnormalities are detected.

Again it should be emphasized that the question of what constitutes the earliest laboratory evidence of chronic benzene toxicity is not known with certainty (ORC/Battle, P.C. 26C, p. 3). It is known that the level of all 3 blood cell lines may be variously affected by exposure. However, examination of the benzene literature reveals that the hematological boundaries of what is considered "normal" have varied. More recent tabulation of normal ranges are those published by NIOSH (Ex. 2-2, p. 135); Wintrobe (Ex. 2-107, p. 1791, 1794, 1795) and those submitted by Jandl (ORC/Jandl, PC 34, p. 29). The normal range of hematological values presented generally agree quite well, especially those given by Jandl and Wintrobe. It is OSHA's conclusion that laboratory findings beyond these ranges must require additional evaluation by a blood specialist. In specifying the values beyond which findings are considered abnormal, OSHA utilized the values in the above citations to yield the widest range (often the range limits do not exactly coincide) in order to minimize the burden on the employer in borderline cases.

However, as illustrated by Goldstein, it may be possible for some individuals to experience a significant hematological response to benzene exposure and yet exhibit blood values within the range normal for the population as a whole (Goldstein, Tr. 356). To identify such workers for referral to a hema-

tologist, the standard also includes as a trigger, an allowable deviation figure for certain indices, relative to an earlier determined value. The advantage of this approach is that the individual acts as his own control. As early as 1926, Greenberg in recommending criteria for exclusion of workers from further benzene exposure, utilized as one of his criteria changes in the blood picture based on results from previous examination of individual employees. He recommended a determined value of a 25% decline in red and white cell levels. The red cell count, hemoglobin and platelet count are generally very stable indices and usually do not vary in individual cases by more than $\pm 10\%$ from baseline values. OSHA believes that a deviation of $\pm 15\%$ or more in these indices compared to the laboratory findings obtained in the most recent test is of sufficient concern to require the attention of a specialist. As white cell counts commonly exhibit greater variation, a percentage deviation trigger would be too restrictive and is therefore not included in the standard. In lieu of a percentage deviation, limits of normal ranges are prescribed.

EMERGENCY SITUATIONS

The emergency medical surveillance provisions reflect OSHA's concern for those employees normally subject to low average exposures but who, because of equipment breakdown or other causes, may be exposed to massive doses of benzene. These workers may be at a relatively high risk for developing adverse hematological effects.

If a worker is exposed to a massive release of benzene, the employer must provide for each individual so exposed a urinary phenol assay at the end of the work shift in which the emergency occurred. If the results of such a test corrected to a specific gravity of 1.024 are less than 75 mg/l, no further testing is required. However, if a urinary phenol result is greater than 75 mg/l, indicating an average exposure above 10 ppm (Watts, Ex. 2-109), then a complete blood count including a differential count must be performed as soon as practicable.

If the red blood cell or platelet count or hemoglobin differ more than $\pm 15\%$ from the most recent prior exam's findings, the worker's test results shall be referred to a hematologist for additional evaluation. Also, if the levels of the three formed elements lie outside of the prescribed ranges further evaluation by a hematologist shall be required.

The use of a urinary phenol assay to determine whether additional tests are indicated for workers exposed to high concentrations of benzene is supported by evidence in the record. The Sun Oil Company reported that special uri-

nary phenol screening tests are prescribed for all persons when 10 ppm exposure levels are suspected (Ex. 77F).

For all types of medical examinations, the employer is required to provide the physician with certain information. This information includes a copy of the regulation, a description of the affected employee's duties as they relate to the employee's exposure, the results of the employee's exposure measurement, if any, or the employee's anticipated or estimated exposure level, a description of any personal protective equipment used or to be used, and information from previous medical examinations of the affected employee to the extent that it is not readily available to the physician. The purpose in making this information available to the physician is to aid in the evaluation of the employee's fitness to work in areas in which the exposure is at or greater than the action level. It should be noted that the standard does not require that a copy of the regulation be given to the physician for each employee. One copy would be sufficient, provided the employer informs the physician which employees are covered by this standard. Information that relates to individual employees or categories of employees (such as the description of job duties) need be transmitted to the physician only once, unless, for example, the duties change. Exposure measurements will be cumulative so that the results of each monitoring since the last examination are to be sent to the physician. However, since sampling may be done on a representative basis, the language of the standard requires the physician to be given either the employee's actual exposure measurements, if available, or the estimated level.

Several criticisms and suggested changes, discussed below, were also received by OSHA in regard to paragraph (i)(6) of the proposed medical surveillance requirements. In the final standard, the employer is required to obtain a written opinion from the examining physician containing: the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at an increased risk of material impairment of health from exposure to benzene, the results of the medical tests performed, and any recommended limitations upon the employee's exposure to benzene and upon the use of protective clothing and equipment such as respirators. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure, and a copy of the opinion must be provided to the affected employee.

Dow Chemical expressed the opinion that the notification requirements

were overly burdensome and that the physician should be required to notify the employer and the employee only for the following reasons: Evidence of benzene toxicity, recommended limitations on worker exposure to benzene for any reason, or a health condition that precludes the use of protective clothing and equipment. (Tr. 2966). The Rubber Manufacturer's Association offered the comment that the physician's written opinion should be supplied to the employee only if requested (Ex. 6-59, p. 5). One commentator cautioned that because of malpractice considerations, a physician might be reluctant to sign such an opinion (National Paint and Coatings Association, Inc. (NPCA), Ex. 41-14, p. 15). Also because of malpractice considerations, the American Iron and Steel Institute recommended that this section be deleted (P.C. 36, p. 109). ORC suggested language changes for this physician's opinion requirement (ORC, P.C. 34, p. 11, Ex. 6-76, p. 11). The NPCA also warned that unless the physician's opinion paragraph was altered, denial of clearance for many prospective employees may result (Ex. 41-14, p. 15). There was also comment concerning with whom the doctor's opinion should be shared. ORC felt that any medical findings or diagnoses should be kept strictly confidential between the worker and the examining physician (P.C. 34, p. 11; Com. 76). Finally, a suggestion was received from industry that paragraph (i)(6)(ii) which limits the physician's opinion to specific findings and diagnoses related only to occupational exposure should be deleted on the basis that the employer has a right to know if there are any reasons related to work or not, that might have an adverse effect upon an employee or may possibly jeopardize fellow workers. (American Coke and Coal Chemicals Institute, Ex. 176, p. 9).

The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure not be included in the written opinion is to encourage employees to submit to medical examination by removing the fear that employers may find out information about their physical condition that has no relation to occupational exposures.

The purpose in requiring the examining physician to supply a written opinion containing the above mentioned analyses is to provide the employer with a medical basis to aid in the determination of initial placement and to provide information on a continuing basis concerning whether or not the worker is at increased risk as a result of his/her benzene exposure. Requiring that the opinion be in written form will serve as an objective check that the employers have actually had the benefit of the information

in making these determinations. Likewise, the requirement that the employee be provided with a copy of the physician's written opinion will assure that the employee is informed of the result of the medical exam and may take appropriate action. Comments suggesting that the physician's opinion be communicated only if there are problems or only upon request are not acceptable to OSHA on the basis that the employer has the ultimate responsibility to assure the protection of the worker's health. Where the findings are negative, transmittal of the doctor's opinion also provides necessary information to both parties that the employee's health has not been adversely affected and provides documentary evidence that the prescribed tests were performed and were evaluated.

Other aspects of paragraph (i) of the medical surveillance section are to be discussed under Recordkeeping, paragraph (1).

MANDATORY REMOVAL AND RATE RETENTION

Among the issues in the benzene rulemaking were whether OSHA should include a mandatory removal requirement—that is, a provision prohibiting the exposure of an employee to benzene if the employee would be placed at increased risk of material impairment to health because of such exposure, and whether OSHA should include a rate retention provision—that is, a provision requiring the transfer of such employee to another job or providing that removal for medical reasons should not result in loss of earnings or seniority status to the affected employee. These issues, as OSHA has previously stated (41 FR 46780), are related and must be addressed together. Both employee and industry participants expressed their views as to several aspects of these issues in pre-hearing comments, in testimony during the hearing and in post-hearing arguments. Subsequent to the close of the record in this proceeding, however, OSHA conducted an informal public hearing on mandatory removal and rate retention for workers exposed to lead as part of the rulemaking proceeding on lead. Consideration of the critical issue of medical removal protection is being undertaken for several pending standards together. Once this consideration is completed, OSHA will consider the extent to which the conclusions on medical removal protection are appropriate for benzene and will propose the inclusion of those provisions in the benzene standard. The final standard published today, therefore, does not address the issues of mandatory removal and medical removal protection.

Employee Information and Training: Paragraph (j). The standard re-

quires each employer to provide training to each of his employees who is or may be exposed to benzene. The need to train employees was not disputed by participants in the rulemaking proceeding. Some comments, however, suggested limiting the training to certain employees. One industry comment requested that workers in closed system operations be excluded from training (Com. 47). Testimony at the hearing, however, revealed that leakages in closed systems are not unusual occurrences and that employee exposure during leaks can reach high levels. One comment suggested the exclusion of workers in open system operations where the benzene content is 1 percent or less (Com. 47). However, as stated above, it has been established that a consistent predictable relationship between the amount of benzene in a mixture and exposure levels does not exist and this suggestion has, therefore, been rejected. Another comment suggested the exclusion of laboratory personnel from training requirements on the ground that laboratory personnel have a good understanding of the hazardous nature of benzene (Com. 70). A laboratory technician, however, testified that during his six years working with many toxic chemicals, including benzene, he received no training (Tr. 3493) and indeed neither he nor his coworkers were aware of the fact that there was an OSHA standard limiting exposure to benzene (Tr. 3492). Information and training are essential for the protection of an employee. Each employee can do much to protect himself if he is fully informed of the hazards in his workplace and the protective equipment he should use. Furthermore, each employee, who is fully informed of the obligations which the standard imposes upon the employer, can determine if he is working in a safe and healthful environment. For the reasons stated herein, OSHA believes that training must be provided to all employees in workplaces where benzene is present.

A trade association, while not disputing the need for training, suggested that employee training not be included in the benzene standard but await development of a comprehensive employee information and training standard based on the report of the Advisory Committee on Hazardous Materials Labeling and/or NIOSH's criteria document entitled "A Recommended Standard * * *".

An Identification System for Occupationally Hazardous Materials" (L.C. 14). OSHA deems it necessary for the protection of the health of employees to include the training requirements in the benzene standard at this time.

The standard specifies the contents of the training program. The information which must be imparted to the

employee must include the nature of benzene related health problems, the necessity for exposure control, and the purposes of medical surveillance and respiratory protections. No participants objected to any of these items. Two participants suggested that employees should also be trained in "early symptom diagnosis to detect acute leukemia" (Ex. Dow Venable statement, pg. 3; Tr. 3192; Ex. 154; Tr. 2963-3056). These participants, however, testified that the most common manifestations of acute leukemia are fatigue and nosebleeds and that these symptoms are not specific to acute leukemia (Tr. 3193).

The signs and symptoms of benzene-induced diseases are described in considerable detail in Appendix A and Appendix C. Both the proposed standard and the final standard specifically require that the employees be informed, among other things, of the information contained in Appendix A and Appendix C. (In this connection, the employee should be instructed to report promptly the development of any of these symptoms which could be attributed to benzene exposure.) In view of the requirement to include the information contained in the appendices as part of the training program, an additional requirement on early symptom diagnosis would be redundant. Similarly, since Appendix B details the volatility of benzene, OSHA has not adopted NIOSH's suggestion (Baier statement, Ex. 84A p. 11) that the standard further emphasize training on the flammability of benzene.

In addition to informing employees, the standard requires that the employer make available to his employees a copy of the standard and its appendices. This requirement is intended to assure that employees understand their rights and duties under the standard.

A public participant suggested that employers be required to hold classes for the training of each employee. (Ex. 183 p. 5) OSHA has not included any specific requirement to this effect in the final standard, preferring to leave the manner of training up to the individual employers. Some employers will need to train individuals on a one-to-one basis, depending on the number of employees at a particular workplace or involved in particular operations. Employers with a few employees may find it burdensome or disruptive of work schedules to conduct training in class sessions.

The employer is also required to provide, upon request, all materials related to the training program to the Secretary and the Director. This requirement is intended to provide an objective check of compliance with the content requirements of the training program.

The standard requires that training of employees be conducted within

ninety days of the effective date. Newly assigned employees must be trained at the time of initial assignment. The standard further requires that training be repeated annually. These requirements were not explicitly in the proposed standard; however, they are consistent with OSHA's policy on training (see, Coke Ovens Emissions Standard) and have been included in the final standard to assure that employees are trained promptly and receive continuing education essential to the protection of their health.

Signs and Labels: paragraph k. The requirements of the standard regarding the posting of warning signs and affixing caution labels remain primarily the same as those in the proposal with some difference in the legend of these signs and labels. These requirements are consistent with section 6(b)(7) of the Act which prescribes the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed.

Signs. The standard requires the posting of warning signs in regulated areas. Some industry comments objected to this requirement on the ground that the training requirements of the standard are sufficient for informing employees of the hazards of benzene (Com. 28). In light of the serious nature of the hazard of exposure to benzene, OSHA does not agree. Not every employee will have completed his training before entering an area of operation where the exposure to benzene is over the permissible exposure level. Moreover, even trained employees will need to be reminded of the locations and the dangers of entering these areas. Additionally, other workers, such as employees of independent maintenance contractors who are authorized to enter particular regulated areas, need to be warned of the hazard and reminded to use protective equipment. OSHA, therefore, believes that both signs and training are necessary to adequately apprise employees of the hazards of benzene.

Other comments requested that laboratories be exempted from the sign requirements (Com. 70) on the ground that laboratory personnel are familiar with the hazards (Com. 20) and because there are already too many other hazardous substances in these work places (Com. 28) for which signs are posted (Com. 37). One comment expressed the view that there is no hazard from exposure to benzene in laboratories or other physical areas where the content of benzene in the mixture used is small (Com. 63, 59) or where benzene is used infrequently (Com. 70). As stated above, there is no established consistent predictable relationship between the amount of benzene and the exposure level, nor does

infrequency of use eliminate the hazard. Signs are required by the standard only in regulated areas where, by definition, the exposure is above the permissible exposure limit. Furthermore, as stated above, OSHA believes that training in hazards alone is not sufficient to inform employees of the potential health hazards of entering or working in a regulated area and the need for the use of protective equipment.

Since warning the employees is necessary, the standard explicitly provides that the employer must assure that nothing which detracts from the required information appears near or on the sign. Laboratory and other employers who have other signs posted in the regulated area, therefore, have the responsibility for meeting this requirement.

Another comment pointed out that signs would be required even where benzene was in a closed system regardless of lack of employee exposure (Com. 65). This comment appears to overlook the fact that signs would be required only in those areas where employee exposure is over the permissible exposure limit and that, if there is no benzene exposure from the closed system, no sign is required. This same comment suggested that signs would be required where benzene was in a sealed container. Since there is no exposure to employees when benzene is in sealed containers, the standard exempts sealed intact containers from all requirements but the labeling and training requirements; hence signs would not be required in areas where benzene is present solely in sealed intact containers. Another comment suggested elimination of sign posting requirements for gasoline products (Com. 55). Since benzene is present in gasoline there is, of course, a benzene hazard attendant to exposure to gasoline. However, sampling data indicates that exposure to benzene is usually below 1 ppm., which would, in such cases, obviate the need for signs.

The standard specifies the wording of the signs. The purpose of this provision is to assure that the proper warning is given to employees. Some participants suggested that the word "Cancer" be replaced by "Leukemia Suspect Agent" (AISI, Princ. Wit, Ex. 156, Tab I, p. 34; PC 36; AISI brief, p. 108; PC 35; MCA brief pp. 103-5, Com. 39). In view of the fact that it has been established that benzene actually induces leukemia, OSHA does not agree that "Leukemia Suspect Agent" adequately informs employees of the hazard. For the same reason, OSHA has not adopted the suggestion of another comment that the sign merely warn of the presence of breathing zone vapors which "may" be hazardous, the need to wear respirators and that unauthorized persons should stay

out (Com. 69). One comment pointed out that the sign requirements do not warn of other serious health hazards that may result from exposure to benzene. Addition of the various other health hazards would increase the wording on the sign with the likely result of detracting from the cancer warning. The reference to the most serious hazard is, in OSHA's view, a sufficient alert to employees that entering the regulated area may be hazardous. Some comments objected to the use of the term "Cancer Hazard" (Com. 26) on the ground that it would only serve to unduly alarm employees (Com. 28, 50). One comment suggested "Cancer Suspect Agent" be used to conform with 29 CFR 1910.1017 which regulates occupational exposures to vinyl chloride. Since exposure to benzene creates an increased risk of leukemia, and since leukemia is cancer of the blood, OSHA does not believe that the hazard is overstated by the use of the term "Cancer Hazard." Nor has OSHA adopted the suggestion that the word "Leukemia" replace the word "Cancer" (Com. 76). While the term "Leukemia" is more specific of the nature of the hazard, "Cancer" is the more familiar term and thus more readily alerts the employee.

Another comment (Com. 69) suggested that the word "Caution" be substituted for "Danger" to conform to 29 CFR 1910.145 (c)(1) and (2) which provide that danger signs should be used only where an immediate hazard exists, and caution signs used only to warn against potential hazards or to caution against unsafe practices. The suggestion was based on the view that OSHA failed to show that there exists a cause-effect relationship between employee exposure to benzene concentrations below 10 ppm. In view of the epidemiological evidence of the human carcinogenicity of benzene, OSHA feels that the use of the word "Danger" is appropriate. Furthermore, the word "Danger" is used to attract the attention of workers, to alert workers to the fact that they are in a hazardous area, i.e., an area where the permissible exposure limit is exceeded, and to emphasize the importance of the message to follow. The use of the word danger is consistent with the Coke Ovens Emissions Standard and other recent health standards.

Two comments objected to the legend "Respirator Required" pointing out that respirators are not always required in regulated areas. The reason given was that, although the concentration within a regulated area will be above 1 ppm, the employee would not have to use a respirator if his 8-hour TWA were below 1 ppm and his 15 minute ceiling is below 5 ppm (Com. 46, 59). OSHA recognizes that some employees entering regulated areas may not be exposed above the permis-

sible exposure limit. It is likely, however, that there will be many employees who work in the regulated areas for such periods of time or at such levels of exposure that they would without respirators be exposed to well above the permissible exposure limit. For this latter group, respirators would be required to reduce their exposure levels. To assure that these employees are adequately protected, it is necessary that the sign alert them to the need to wear respirators. Moreover, since even persons who are in a regulated area occasionally and are not exposed over the permissible exposure limits may face an increased risk of leukemia, OSHA does not believe that the respirator warning is such an overstatement as to necessitate elimination of that warning from the sign.

One comment pointed out that the warning sign ignores the flammability of benzene (Com. 50). NIOSH also recommended that the potential danger for fire be displayed on signs with equal prominence with the toxicological hazards. (Tr. 755) OSHA agrees. Benzene, as has been stated, is a highly flammable liquid. Accordingly, in the final standard, OSHA has added a requirement that the signs also contain the legend "Flammable—No Smoking" with equal prominence to the legend "Cancer Hazard."

Labels. The standard requires the use of caution labels on all containers of products containing any amount of benzene. This requirement imposes upon the employer the obligation to assure that all such containers within his workplace are at all times properly labeled. Some industry comments requested that OSHA define "container" (Com. 46, 55, 65) in terms of sizes and types of containers (Com. 53; Com. 72). Participants also appeared to be confused as to whether storage tanks, pipelines, tank cars and tank trucks are such containers as would be required labeling (Com. 60). The purpose of the labeling requirement is to assure that, wherever benzene is present in any quantity, employees are apprised of the hazard. The size or type of the container or its use as a storage vessel is, therefore, not material to this objective. In imposing the labeling requirement, however, OSHA does not intend to include pipelines, or to include trucks or other vessels transporting benzene products in sealed containers. At many points of pipelines, there is no employee exposure nor can the point at which benzene enters a product stream often be determined. Benzene in liquid mixtures, other than in gasoline, is often transported in closed containers, in which case labeling of the container is sufficient without a need for labeling the transport vehicle. Where benzene products not in containers are transported in barges or other tank vessels,

such as tankers and tank trucks, it is, of course, necessary that the vessel be labeled. With regard to gasoline, the standard does not cover activities past the bulk terminal and, therefore, gasoline trucks would not require labeling. In view of the above, the standard specifically excludes from the labeling requirements pipelines and any transport vessels or vehicles where the benzene product is transported in sealed containers.

Some participants suggested that the labeling requirements apply only to containers which have liquids with greater than 1% benzene (Com. 53, 72). It was also suggested that labels be affixed only to containers from which exposure to benzene levels above the permissible exposure limit might be reasonably expected to occur so as to exclude a requirement to label finished products which might contain trace amounts of benzene (Com. 59). Since there is no known safe level of exposure to benzene, OSHA feels that, for employees to be adequately apprised of the hazard, all containers must be labeled in the same manner.

The standard requires that the caution labels remain affixed when benzene products leave the employer's workplace. Some comments questioned OSHA's jurisdiction to impose such a requirement (Com. 50, 55, 59). The purpose of this requirement is to assure that all employees, not only those of a particular employer, are apprised of the hazardous nature of benzene exposure. It is OSHA's view that informing employees of the hazards to which they are exposed is an important element in reducing occupational disease and injury and one of the significant purposes of the Occupational Safety and Health Act, Section 6(b)(7) of the Act, which explicitly provides for regulation requiring the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed, is broadly drawn. This section does not limit the employer's obligation of informing employees of hazardous conditions to the employer's own employee. When an employer manufactures, formulates or sells a product containing a toxic substance, that employer is exposing not only his own employees but also the employees of other employers involved in handling, transporting or using the product. The extent of the obligation to inform should be commensurate with the extent of the exposure. This is especially true where the manufacturer, formulator or seller will in many cases be the only employer capable, through his unique knowledge, of providing the information needed for protection of employees. A narrower reading of the statutory authority would defeat the protective purposes of the Act by withholding from employees down the

line who come into any contact with the product, adequate information as to the hazard. Furthermore, the use of the labels will alert other employers, who utilize or handle the product and who would not otherwise know of the presence of benzene in their workplace, of their obligation to comply with the standard. OSHA, therefore, feels that this requirement is necessary and appropriate to effectuate the purposes of the Act.

The standard prescribes the legend that must be included on the label. This is to assure that employees are alerted to the fact that they are handling benzene and to the hazard involved. The record evidence establishes that a variety of code names have been used for benzene (Ex 61, Sakol) and that employers (Tr. 3383; 3516), workers (Tr. 3402) and physicians (Tr. 305-6) often do not know that the product contains benzene. Some participants suggested that labels state the percentage of benzene in the product (Com. 58, 21, 59). In order to keep the label information to a minimum and since there is no consistent predictable relationship between the amount of benzene in the product and the percentage level, the final standard does not require any such statement on the label.

Recordkeeping and reporting. The provisions for recordkeeping, reporting, availability of records and the transfer of records are similar to those in the proposal. Such changes as have been made in the final standard are in response to the request of public participants that OSHA reduce the burden imposed by these types of requirements. These provisions implement the requirements of section 8(c)(1) and (3) of the Act, and are consistent with OSHA's general policy concerning records and reports.

Records: paragraph (1) The standard requires a limited amount of recordkeeping. Employers must maintain exposure measurement records and medical records.

The need for keeping these records was generally accepted by the participants in the benzene rulemaking. The common purposes of these recordkeeping requirements is to assure the employer's compliance with the control measures designed for the protection of his employees, and to collect data vital to epidemiological and diagnostic investigations in order to resolve such questions as dose-response relationships in blood diseases caused by exposure to benzene. Furthermore, these records are useful for the employer by enabling him to identify areas of his operations where there is or may be a problem. Exposure measurement records assist in pinpointing those processes or operations which require additional efforts to reduce exposure to benzene. Medical records provide an

awareness of the incidence of industrial illness in the employer's establishment and assist the employer to focus on any aspect of his operation which may materially impair the health of his employees. The required records are also useful to the employee: Exposure records assure employees that their exposure to benzene is being monitored and also inform them of the hazards to which they are exposed; medical records assist their examining physician to accurately diagnose and treat any health problem and assure proper evaluation of their health.

The standard specifies the information which must be included in the record. The exposure measurement record must include information which accurately reflects the exposure of each individual employee. The medical record must include the work history of each individual employee and information accurately reflecting his health. A few participants disputed the need for the content of some of these records. One comment suggested deletion of the requirement in paragraph (1)(1)(b) to include as part of the exposure record a description of sampling on the ground that it is the same requirement as in paragraph (1)(1)(a) for a description of the sampling procedure used to determine representative employee exposure. (Com. 76) This participant has misunderstood these requirements. The "description of sampling" in subparagraph (b) refers to the type of equipment used for collecting the concentrations of benzene, the rate at which these samples were collected and the minimum period during which the collection took place. The "sampling procedure" referred to in subparagraph (a) refers to the criteria or method used by the employer to determine that the samples he has taken are representative of the particular employee's exposure. Although these paragraphs are directed to different requirements, OSHA has eliminated from subparagraph (a) of this provision the word "sampling" in order to avoid such confusion on the part of other employers.

Another comment expressed the view that requiring employers to include in the record all of the information provided to the examining physician is an undue administrative burden (Com. 59). Where the information is communicated in writing to the doctor who will examine the employee, the employer can meet his requirement by simply retaining in his files a copy of this communication. Where, however, the information is not furnished in writing, it is essential to record it to assure that the examining physician has been advised of all the information needed for evaluation of the employee's health. Moreover, since

this information includes exposure conditions and symptoms, the information is most useful not only to the current examining physician but also to a physician who years later evaluates the health of the employee. OSHA, therefore, has retained in the standard the requirement to record the information provided to the examining physician.

An industry comment pointed out that it is not necessary for the company physicians, who maintain the medical records on behalf of the employer, to retain a copy of the regulation and its appendices as part of the record of each individual employee, but that retention of one master copy in the files would be sufficient if there is a reference to it in each employee's file (Com. 46). OSHA agrees that retention of the regulation and appendices in each employee's file unnecessarily increases the space needed for the records and, accordingly, has given employers the option in the final standard of either including the regulation and appendices in each employee's file or of retaining a master copy of these documents and referencing them in each employee's medical file.

Some industry participants testified that their facilities would need additional record clerks to maintain the information in the required records (TR 3165-3171). In view of the reduction in the final standard of the number of employees for whom exposure and medical monitoring must be conducted and reduction of at the frequency rate suggested by the proposal, the need for additional recordkeeping personnel is significantly reduced. Furthermore, since the standard does not require the use of any particular form for maintaining the prescribed information, employers may incorporate these records into already existing recordkeeping systems, some of which are computerized, and thus further minimize the need for additional personnel.

The standard requires that the exposure measurement records and medical surveillance records be maintained by the employer for at least 40 years or for the duration of employment plus twenty years, whichever is longer. Several participants objected to the length of this retention period. One comment expressed the view that the retention period was unnecessarily burdensome where the only exposure to benzene is from liquid products containing small amounts of benzene (Com. 55). Both because there is no known safe level for exposure to benzene and because there is no direct linear correlation between the percentage of benzene in a liquid mixture and exposure levels, OSHA feels that there is no basis for different retention requirements based on the amount of benzene in liquids. More-

over, in view of the provision for an action level in the final standard, the number of exposure measurements and medical examinations which must be recorded will be greatly minimized where the small amounts of benzene actually do result in exposures below the action level.

Another comment suggested that the retention period for the medical surveillance records is unreasonably long (Com. 59). OSHA is aware of the burden of keeping both the medical and the exposure records for this length of time. However, OSHA feels that it is essential that the records be retained for this period. The record evidence establishes that the latency period for benzene induced leukemia is unknown (Ex. 2B-283, p. 4) and that, as in the case of other chemical carcinogens, the symptoms of carcinogenesis—in this case, benzene induced leukemia—may not appear for many years after the initial exposure (Tr. 385, 391, 410-11, 424). The retention period of forty years has, therefore, been selected to assure that the entire latency period would be covered. Furthermore, as stated in OSHA's standard for Coke Ovens Emissions (41 FR 46782), OSHA believes that it is essential to scientific investigations that exposure and medical records be maintained for the same length of time, and that the retention period for these records be at least forty years.

One comment suggested that independent contractors, who customarily hire employees only for temporary work at a particular facility, be allowed to send the medical records to the Director of NIOSH upon expiration of the employee's employment (Com. 63). As is noted below, it is OSHA's policy for all employers that the records be maintained at the place of employment so long as it is in existence.

The standard does not require that the employer, on any regular basis, send copies of his records to OSHA. The employer is, however, required upon request to make the records available for examination and copying to designated representatives of OSHA and NIOSH. This requirement is necessary both for compliance purposes and for scientific investigations. Records of required exposure monitoring are, in addition, to be made available, for examination and copying, to current employees and their representatives; and exposure monitoring records indicating their own exposure must be made available to former employees or their designated representatives. One participant suggested deletion of the reference to the term "or their designated representative" (Com. 48) thus restricting access to appropriate exposure records only to the current or former employee himself. OSHA is of the view that denying access to the re-

cords of individual exposure by designated representatives could result in a denial of access to the information by the employee where he is incapacitated and unable to inspect the records or simply not able to understand them. This would defeat the purpose of the availability provision which is to assure current employees that their exposure is properly monitored and assure former employees of access to information necessary for the continued protection of their health. Furthermore, the Act recognizes (sections 2(b)(13); 8(c)(3); 8(f)(1)) the legitimate role of employee representatives in occupational safety and health. One industry comment suggested that employee representatives be formally designated in writing and that access to records also be requested in writing (Com. 15). OSHA does not deem it necessary to include such a requirement in the standard, but employers may establish procedures for access to records so long as the procedures do not restrict the employees' and former employees' to access.

The standard also requires that medical records also be made available, upon request, for examination and copying to the designated physicians or representative of both current and former employees. Some comments questioned the fact that the standard enables not only the employer but also the employee and his representative and OSHA and NIOSH to have access to medical records without specifying confidentiality or otherwise limiting circulation of the information (Com. 26, 48). OSHA recognizes that a physician's records may contain a wide range of personal and medical information deemed to be confidential or private. For this reason, the standard limits the contents of the medical record to such information as is related to benzene exposure. Indeed, the standard requires in paragraph (i) (6) (ii) that the employer advise the physician that the physician's opinion, which becomes a part of the medical record, should not reveal findings or diagnoses unrelated to occupational exposure. The need of the employer, the employee and OSHA and NIOSH to have access to this information has already been thoroughly discussed. Disclosure of the information to other persons is, of course, subject to protective requirements of any applicable laws or regulations.

To assure that the records will be preserved for the required retention period of forty years, the standard requires an employer, who ceases to do business, to transfer his records to his successor and, in the event that there is no successor, to transfer the records to the Director of NIOSH. One industry comment suggested that this section be deleted. (Com. 59). Allowing employers to dispose, at will, of the re-

cords of exposure measurements and medical surveillance would result, more often than not, in destruction of these records thus depriving employees of information necessary for evaluation of their health, as well as depriving NIOSH of information valuable to its scientific investigations.

Another participant suggested elimination of the requirement that the records be transferred to NIOSH by registered mail. (Com. 68). OSHA has adopted this suggestion and the permanent standard eliminates the requirement to use registered mail.

Reports. Paragraphs (d)(3), (e)(5), (f)(2), (i)(4)(i). The standard imposes notification requirements upon employers. This requirement is discussed above under *Regulated Areas*.

The standard also obligates the employer to give certain information to employees. The employer must notify each employee of the exposure measurement representative of his exposure. This notification must be made regardless of what the exposure level of the employee is. Two comments suggested that availability of exposure records was sufficient to inform employees of the results of their monitoring (Com. 46 Com. 53). Several comments suggested that the notification be required only where the employees' exposure is above the permissible exposure level (Com. 10, 15, 21, 41, 46, 53, 59) and that exposures below the permissible level be available to the employee upon request (Com. 10). OSHA believes that, consistent with section 8(c)(3) of the Act, every employee has the right to know what his exposure level is and whether it is above or below the permissible exposure level. Moreover, since the permissible exposure level is a feasibility level and not a "safe" level, the employee must know, for proper evaluation of his health by a physician in the present and future, the level of benzene to which he is exposed. Accordingly, the suggestions to modify the employee notification requirements have not been adopted.

The standard further requires that, where the employee's exposure is over the permissible exposure level, the employer must also state in the notification what corrective action the employer is going to take to reduce the exposure level. This is necessary to assure employees that the employer is making every effort to furnish them with a safe and healthful work environment, and implements section 8(c)(3) of the Act.

Notifications to employees of their exposure levels must be made in writing. Several comments objected to this requirement. Some comments suggested that the employer be permitted to notify employees by posting of a notice on the workplace bulletin board (Com. 15, 49, 59), thus relieving the

employer of the burden of notifying each and every employee. It is OSHA's view that direct notification to each employee is necessary in order to assure that the employee, as required by section 8(c)(3) of the Act, is apprised of all hazards to which the employee is exposed.

The standard further requires that the notification be within five working days after receipt of the employer's measurement results. Several industry comments requested a change in the five day requirement so as to allow additional time for employers to comply. (Com. 47, 49, 54, 59). OSHA feels that, under ordinary circumstances, the five day limit fulfills the statutory requirement for promptness (section 8(c)(3)) yet allows employers sufficient time for the written notification.

The standard further obligates the employer to provide the employee with a copy of the examining physician's written opinion. One industry comment pointed out the large volume of letters per year which this notification would entail (Com. 53). However, in view of the necessity for each employee to have an evaluation of his health, OSHA is of the view that furnishing each employee with a copy of the physician's letter is not unreasonably burdensome.

Written compliance programs are also required by the standard. These are discussed above under *Methods of Compliance*. The employer is required to submit his compliance program, on request, to OSHA and NIOSH. Additionally, he must make this program available at the worksite for examination by OSHA and NIOSH and by his employees or their authorized representatives. One participant suggested that employers be required to give to each employee a notice of availability of the compliance program rather than merely making it available to the employee or his representative. OSHA feels that this would place an unnecessary burden upon the employer, and has not incorporated the suggestion.

Observation of monitoring: paragraph (m). The final standard requires that the employer provide affected employees or their designated representatives with an opportunity to observe the measuring of employee exposures. This opportunity is specifically required by section 8(c)(3) of the Act. The standard also sets forth certain procedures which must be complied with in connection with the observation of the monitoring. These procedures are designed to assure that the right to observe is meaningful and that the health and safety of the observer is protected during the observation.

A few industry participants requested that the observation of monitoring provision be deleted from the standard (Com. 65). Union participants objected

to any limitations on this requirement (Grosperon statement, Ex. 11.A, p. 12). The arguments by industry were several: (1) The requirement fails to limit the number of employees who can observe the monitoring; (2) it increases the employer's costs of monitoring; (3) employees lose time from their jobs; (4) it exposes employees to additional hazards; (5) it increases the liability potential for non-employees who are injured while observing; and (6) will result in labor/management confrontations (Com. 65, 70; L.C. 4). In view of the statutory mandate that "regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring," OSHA has not adopted the suggestions to delete this provision.

One comment suggested that a one-time limit on observation of monitoring be established for each employee (Com. 60). OSHA has not adopted this suggestion since the statute does not impose any such limit and it does not appear to be reasonable. For example, a requirement to this effect would prohibit an employee or his representative who has observed the original monitoring to observe the redetermination of exposure which is required by the standard after a process or control change.

EFFECTIVE DATE

In order to assure that affected employers and employees will be informed of the existence of the provisions and terms of this standard, and that employers and employees are given an opportunity to familiarize themselves with any new requirements, the effective date of this standard will be March 13, 1978. Until such date, 29 CFR 1910.1000, Table Z-2 will continue to apply to those operations covered by the new 29 CFR 1910.1028. Subsequent to that date, 29 CFR 1910.1000, Table Z-2 will continue to apply to all operations exempted under the new 29 CFR 1910.1028.

APPENDICES

Three appendices have been included in this permanent standard. These appendices have been included primarily for information purposes. None of the statements contained therein should be construed as establishing a mandatory requirement not otherwise imposed by the standard or as detracting from an obligation which the standard does impose.

The information contained in Appendices A and B is designed to aid the employer in complying with requirements of the standard. The information in Appendix C primarily provides information needed by the physician to evaluate the results of the medical examination. Appendix C also lists other types of examinations, not required by the standard, which may

help the physician in making an accurate assessment as to whether continued exposure to benzene will place the employee at an increased risk. It should be noted that paragraph (j)(1) (i) and (iv) specifically require that the information contained in Appendix A and C be provided to employees as part of their information and training program.

Some suggestions were made by participants regarding the contents of these appendices. One participant suggested that Appendix A, Part III-A include the requirement as to frequency of change of respirator cartridges and canisters (Com. 8). OSHA has not adopted this suggestion since the requirement is clearly set forth in the standard, and the employer is required as part of the training program to give each employee a copy of the standard. Another participant (Com. 59) suggested that Appendix A, I, B2 state that eye contact and repeated skin contact "be avoided" instead of "prohibited." OASH does not agree since the standard prohibits such contact. This same participant suggested that the last sentence of Appendix A, IV, A be changed to indicate that medical assistance should be sought only if irritation of eye or face persists. This limitation has not been added for the reason that OSHA feels that the more conservative advice imparted by the proposed paragraph better alerts the employees to the possible hazards of this type of exposure. The third suggestion of this participant was that Appendix A state that "medical assistance" be sought rather than that "a doctor" be called when large quantities of benzene are breathed. A modification of this suggestion has been adopted and it is now recommended that medical assistance or a doctor be called for as soon as possible.

VII. AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 4(b)(2), 6(b), 6(c) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1596, 1596, 29 U.S.C. 653, 655, 657), the specific statutes referred to in section 4(b)(2), Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations, is hereby amended by deleting the emergency temporary standard for occupational exposure to benzene at § 1910.1028 and adding a new permanent standard for occupational exposure to benzene as § 1910.1028, and by amending Table Z-2 of § 1910.1000. In addition, pursuant to section 4(b)(2) of the Act (84 Stat.

1592; 29 U.S.C. 653), OSHA has determined that this new standard in § 1910.1028 is more effective than the corresponding standards now in Subpart B of Part 1910, and in Parts 1915, 1916, 1917, 1918, and 1926 of Title 29, Code of Federal Regulations. Therefore, these corresponding standards are superseded by this new § 1910.1028. This determination, and the application of the new standard to the maritime and construction industries, are implemented by adding a new paragraph (c) to § 1910.19 and by revoking § 1910.20.

Signed at Washington, D.C., this 31st day of January, 1978. These amendments are effective on March 13, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. A new paragraph (c) is added to § 1910.19, to read as follows:

§ 1910.19 *Special provisions for air contaminants.*

(c) Section 1910.1028 shall apply to the exposure of every employee to benzene in every employment and place of employment covered by §§ 1910.12, 1910.13, 1910.14, 1910.15, or § 1910.16, in lieu of any different standard on exposure to benzene which would otherwise be applicable by virtue of any of those sections.

§ 1910.20 [Revoked]

2. Section 1910.20 is revoked.

§ 1910.1000 [Amended]

3. Table Z-2 of § 1910.1000 is amended by adding a footnote following the words "Benzene (Z37.40-1969)," and by adding the following below Table Z-2:

4. Section 1910.1028 is revised to read as follows:

§ 1910.1028 Benzene.

(a) *Scope and application.* (1) This section applies to each place of employment where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled, or used.

(2) This section does not apply to:

(i) The storage, transportation, distribution, dispensing, sale or use as fuel of gasoline, motor fuels, or other fuels subsequent to discharge from bulk terminals; or

(ii) Occupational exposures to benzene are subject to the requirements of § 1910.1028 except as specifically exempted by § 1910.1028(a)(2). Exposures exempted by § 1910.1028(a)(2) are covered by this § 1910.1000

(ii) The storage, transportation, distribution or sale of benzene in intact containers sealed in such a manner as to contain benzene vapors or liquid, except for the requirements of paragraph (k) (2), (3), (4), and (5), and paragraph (j) of this section.

(b) *Definitions.* "Action level" means an airborne concentration of benzene of 0.5 ppm, averaged over an 8-hour work day.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Authorized person" means any person required by his duties to enter a regulated area and authorized to do so by his employer, by this section or by the Occupational Safety and Health Act of 1970. "Authorized person" includes a representative of employees who is designated to observe monitoring and measuring procedures under paragraph (m) of this section.

"Benzene" (C₆H₆) (CAS Registry No. 00071432) means solid, liquefied or gaseous benzene. It includes mixtures of liquids containing benzene and the vapors released by these liquids.

"Bulk terminal" means a facility which is used for the storage and distribution of gasoline, motor fuels or other fuels and which receives its petroleum products by pipeline, barge or marine tanker.

"Director" means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health, Education, and Welfare, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may, or does, result in a massive release of benzene.

"OSHA Area Office" means the office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits.*—(1) *Inhalation.*—(i) *Time-weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of 1 part benzene per million parts of air (1 ppm) as an 8-hour time-weighted average.

(ii) *Ceiling limit.* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of 5 ppm as averaged over any 15 minute period.

(2) *Dermal and eye exposure limit.* The employer shall assure that no employee is exposed to eye contact with liquid benzene; or to skin contact with liquid benzene, unless the employer can establish that the skin contact is an isolated instance.

(d) *Regulated areas.* (1) the employer shall establish, within each place of

employment, regulated areas where benzene concentrations are in excess of the permissible airborne exposure limit.

(2) The employer shall limit access to regulated areas to authorized persons.

(3) *Notification of regulated areas.* Within 30 days following the establishment of a regulated area, the employer shall report the following information to the OSHA Area Office:

(i) The address of each establishment which has one or more regulated areas;

(ii) The locations, within the establishment, of each regulated area;

(iii) A brief description of each process or operation which results in employee exposure to benzene in regulated areas; and

(iv) The number of employees engaged in each process or operation within each regulated area which results in exposure to benzene, and an estimate of the frequency and degree of exposure within each regulated area.

(e) *Exposure monitoring and measurements.*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to benzene over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which could occur if the employee were not using a respirator.

(2) *Initial monitoring.* (i) Each employer, who has a place of employment where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled or used shall monitor each of these workplaces and work operations to accurately determine the airborne concentrations of benzene to which employees may be exposed.

(ii) The initial monitoring required under paragraph (e)(2)(i) of this section shall be conducted and the results obtained within 30 days of the effective date of this section. Where the employer has monitored after January 4, 1977 and the monitoring satisfies the accuracy requirements of paragraph (e)(6) of the section, the employer may rely on such earlier monitoring to satisfy the requirements of paragraph (e)(2)(i) of this section, unless there has been a production, process, personnel or control change which may have resulted in new or additional exposures to benzene or the employer has any other reason to suspect a change which may have resulted in new or additional exposures to benzene; and provided that the employer maintains a record of the monitoring in accordance with paragraph (l)(1) and notifies each employee in accordance with paragraph (e)(5).

(3) *Frequency.*—(i) *Measurements below the action level.* If the measure-

ments conducted under paragraph (e)(2)(i) of this section reveal employee exposure to be below the action level, the measurements need not be repeated, except as otherwise provided in paragraph (e)(4) of this section.

(ii) *Measurements above the action level.* If the measurements reveal employee exposure to be in excess of the action level, but below the permissible exposure limit, the employer shall repeat the monitoring at least quarterly. The employer shall continue these quarterly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the action level, and thereafter the employer may discontinue monitoring, except as provided in paragraph (e)(4) of this section.

(iii) *Measurements above the permissible exposure limit.* If the measurements reveal employee exposure to be in excess of the permissible exposure limits, the employer shall repeat the measurements at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) *Additional monitoring.* Whenever there has been a production, process, personnel or control change which may result in new or additional exposure to benzene or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to benzene, such as spills, leaks, ruptures, or breakdowns, the employer shall repeat the monitoring which is required by paragraph (e)(2)(i) of this section.

(5) *Employee notification.* (i) Within 5 working days after the receipt of the measurement results, the employer shall notify each employee in writing of the exposure measurements which represent that employee's exposures.

(ii) Where the results indicate that the employee's exposure exceeds the permissible exposure limits, the notification shall also include the corrective action being taken or to be taken by the employer to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* The employer shall use a method of measurement which has an accuracy, to a confidence level of 95 percent, of not less than plus or minus 25 percent for concentrations of benzene greater than or equal to 1 ppm.

(f) *Methods of compliance.*—(1) *Priority of compliance methods.* The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to benzene at or below the permissible exposure limits, except to the extent that the employer establishes that these controls are not feasible. Where feasi-

ble engineering and work practice controls are not sufficient to reduce employee exposure to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls, and shall supplement them by the use of respiratory protection.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits solely by means of engineering and work practice controls required by paragraph (f)(1) of this section.

(ii) The written program shall include a schedule for development and implementation of the engineering and work practice controls. These plans shall be revised at least every six months to reflect the current status of the program.

(iii) Written plans for these compliance programs shall be submitted, upon request, to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and the employees or their authorized representatives.

(iv) The employer shall institute and maintain at least the controls described in his most recent written compliance program.

(g) *Respiratory protection.*—(1) *General.* Where respiratory protection is required under this section, the employer shall select, provide and assure the use of respirators. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) During maintenance and repair activities in which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the National Institute for Occupational Safety and Health under the program of 30 CFR Part 11.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with § 1910.134(b), (d), (e) and (f).

(4) *Respirator use.* (i) Where air purifying respirators (cartridge, canister,

or gas mask) are used, the employer shall, except as provided in paragraph (g)(4)(ii) of this section, replace the air-purifying canisters or cartridges prior to the expiration of their service life or the end of shift in which they are first used, whichever occurs first.

(ii) Where a cartridge or canister of an air purifying respirator has an end of service life indicator certified by NIOSH for benzene, the employer may permit its use until such time as the indicator shows the end of service life.

(iii) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is properly fitted.

(iv) The employer shall allow each employee who wears a respirator to wash his or her face and respirator facepiece to prevent skin irritation associated with respirator use.

TABLE 1.—Respiratory protection for benzene

Airborne concentration of benzene or condition of use	Respirator type
(a) Less than or equal to 10 p.p.m.	(1) Any chemical cartridge respirator with organic vapor cartridge; or (2) Any supplied air respirator.
(b) Less than or equal to 50 p.p.m.	(1) Any chemical cartridge respirator with organic vapor cartridge and full facepiece; (2) Any supplied air respirator with full facepiece; (3) Any organic vapor gas mask; or (4) Any self-contained breathing apparatus with full facepiece.
(c) Less than or equal to 1,000 p.p.m.	(1) Supplied air respirator with half mask in positive pressure mode.
(d) Less than or equal to 2,000 p.p.m.	(1) Supplied air respirator with full facepiece, helmet, or hood, in positive pressure mode.
(e) Less than or equal to 10,000 p.p.m.	(1) Supplied air respirator and auxiliary self-contained facepiece in positive pressure mode; or (2) Open circuit self-contained breathing apparatus with full facepiece in positive pressure mode.
(f) Escape	(1) Any organic vapor gas mask; or (2) Any self-contained breathing apparatus with full facepiece.

(h) *Protective clothing and equipment.* Where eye or dermal exposure may occur, the employer shall provide, at no cost to the employee, and assure that the employee wears impermeable protective clothing and equipment to protect the area of the body which may come in contact with liquid benzene. Eye and face protection shall meet the requirements of § 1910.133 of this Part.

(i) *Medical Surveillance.*—(1) *General.* (i) The employer shall make avail-

able a medical surveillance program for employees who are or may be exposed to benzene at or above the action level and employees who are subjected to an emergency.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and provided without cost to the employee.

(2) *Initial examinations.* (i) Within thirty days of the effective date of this section, or before the time of initial assignment, the employer shall provide each employee who is or may be exposed to benzene at or above the action level with a medical examination, including at least the following elements:

(a) A history which includes past work exposure to benzene or any other hematologic toxins; a family history of blood dyscrasias including hematological neoplasms; a history of blood dyscrasias including genetically related hemoglobin alterations, bleeding abnormalities, abnormal function of formed blood elements; a history of renal or liver dysfunction; a history of drugs routinely taken, alcoholic intake and systemic infections; a history of exposure to marrow toxins outside of the current work situation, including volatile cleaning agents and insecticides;

(b) Laboratory tests, including a complete blood count with red cell count, white cell count with differential, platelet count, hematocrit, hemoglobin and red cell indices (MCV, MCH, MCHC), serum bilirubin and reticulocyte count; and

(c) Additional tests where, in the opinion of the examining physician, alterations in the components of the blood are related to benzene exposure.

(ii) No medical examination is required to satisfy the requirements of paragraph (i)(2)(i) of this section if adequate records show that the employee has been examined in accordance with the procedures of paragraph (i)(2)(i) of this section within the previous six months.

(3) *Information provided to the physician.* The employer shall provide the following information to the examining physician for each examination under this section:

(i) A copy of this regulation and its appendixes;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(4) *Physician's written opinions.* (i) For each examination under this section, the employer shall obtain and provide the employee with a copy of the examining physician's written opinion containing the following:

(a) The results of the medical examination and tests;

(b) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee's health at increased risk of material impairment from exposure to benzene;

(c) The physician's recommended limitations upon the employee's exposure to benzene or upon the employee's use of protective clothing or equipment and respirators.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(5) *Periodic examinations.* (i) The employer shall provide each employee covered under paragraph (1)(1)(i) of this section with a medical examination at least semi-annually following the initial examination. These periodic examinations shall include at least the following elements:

(a) A brief history regarding any new exposure to potential marrow toxins, changes in drug and alcohol intake and the appearance of physical symptoms relating to blood disorders;

(b) A complete blood count with red cell count, white cell count with differential, platelet count, hemoglobin, hematocrit and red cell indices (MCV, MCH, MCHC); and

(c) Additional tests where in the opinion of the examining physician, alterations in the components of the blood are related to benzene exposure.

(ii) Where the employee develops signs and symptoms commonly associated with toxic exposure to benzene, the employer shall provide the employee with a medical examination which shall include those elements considered appropriate by the examining physician.

(6) *Emergency situations.* If the employee is exposed to benzene in an emergency situation, the employer shall provide the employee with a urinary phenol test at the end of the employee's shift. The urine specific gravity shall be corrected to 1.024. If the result of the urinary phenol test is below 75 mg/ml, no further testing is required. If the result of the urinary phenol test is equal to or greater than 75 mg/ml, the employer shall provide the employee with a complete blood count including a red cell count, white cell count with differential, and platelet count as soon as practicable, and shall provide these same counts one month later.

(7) *Special examinations.* (i) Where the results of any tests required by this section reveal that any of the fol-

lowing conditions exist, the employer shall have the test results of the employee evaluated by a hematologist:

(a) The red cell count, hemoglobin or platelet count varies more than 15 percent above or below the employee's most recent values;

(b) The red cell count is below 4.4 million or above 6.3 million per mm³, (for males), or below 4.2 million or above 5.5 million per mm³ (for females);

(c) The hemoglobin is below 14 grams percent or above 18 grams percent (for males) or below 12 grams percent or above 16 grams percent (for females);

(d) The white cell count is below 4,200 or above 10,000;

(e) The thrombocyte count is below 140×10⁹ cells per mm³ or above 440×10⁹ cells per mm³.

(ii) In addition to the information required to be provided to the physician under paragraph (1)(3) of this section, the employer shall provide the hematologist with the medical record required to be maintained by paragraph (1)(2) of this section.

(iii) The hematologist's evaluation shall include a determination as to the need for additional tests, and the employer shall assure that these tests are provided.

(j) *Employee information and training.* (1) *Training program.* (i) The employer shall institute a training program for all employees assigned to workplaces where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled or used and shall assure that each employee assigned to these workplaces is informed of the following:

(a) The information contained in Appendices A and B of this section;

(b) The quantity, location, manner of use, release, or storage of benzene and the specific nature of operations which could result in exposure above the permissible exposure limits as well as necessary protective steps;

(c) The purpose, proper use, and limitations of personal protective equipment and clothing required by paragraph (h) of this section and of respiratory devices required by paragraph (g) of this section and § 1910.134 (b), (d), (e) and (f);

(d) The purpose and a description of the medical surveillance program required by paragraph (i) of this section and the information contained in Appendix C of this section; and

(e) The contents of this standard.

(ii) The training program required under paragraph (j)(1)(i) of this section shall be provided within 90 days of the effective date of this section or at the time of initial assignment to workplaces where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled or used, and at least annually thereafter.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its Appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(k) *Signs and labels.* (1) The employer shall post signs in regulated areas bearing the following legend:

DANGER
BENZENE
CANCER HAZARD
FLAMMABLE—NO SMOKING
AUTHORIZED PERSONNEL ONLY
RESPIRATOR REQUIRED

(2) The employer shall assure that caution labels are affixed to all containers of benzene and of products containing any amount of benzene, except:

(i) Pipelines, and

(ii) Transport vessels or vehicles carrying benzene or benzene products in sealed intact containers.

(3) The employer shall assure that the caution labels remain affixed when the benzene or products containing benzene are sold, distributed or otherwise leave the employer's workplace.

(4) The caution labels required by paragraph (k)(2) of this section shall be readily visible and legible. The labels shall bear the following legend:

CAUTION
CONTAINS BENZENE
CANCER HAZARD

(5) The employer shall assure that no statement which contradicts or detracts from the information required by paragraphs (k)(1) and (k)(4) of this section appears on or near any required sign or label.

(l) *Recordkeeping.* (1) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section.

(ii) This record shall include:

(a) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(b) A description of the sampling and analytical methods used;

(c) Type of respiratory protective devices worn, if any; and

(d) Name, social security number, and job classification of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the

duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (1) of this section.

(ii) This record shall include:

(a) The name, and social security number of the employee;

(b) A copy of the physicians' written opinions, including results of medical examinations and all tests, opinions and recommendations;

(c) The peripheral blood smear slides of the initial test, the most recent test, and any test demonstrating hematological abnormalities related to benzene exposure;

(d) Any employee medical complaints related to exposure to benzene;

(e) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and its appendices for all employees provided that he references the standard and its appendices in the medical surveillance record of each employee;

(f) A copy of the information provided to the physician as required by paragraphs (1)(3)(ii) through (1)(3)(v) of this section; and

(g) A copy of the employee's medical and work history related to exposure to benzene or any other hematologic toxins.

(iii) The employer shall maintain this record for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records as required by this section be made available for examination and copying to affected employees or their designated representatives.

(iii) The employer shall assure that former employees and the former employees' designated representatives have access to such records as will indicate the former employee's own exposure to benzene.

(iv) The employer shall assure that employee medical records required to be maintained by this section be made available upon request for examination and copying to a physician or other individual designated by the affected employee or former employee.

(4) *Transfer of records.* (i) When the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (1) of this section for the prescribed period.

(ii) When the employer ceases to do business and there is no successor employer to receive and retain the re-

records for the prescribed period, the employer shall transmit these records by mail to the Director.

(iii) At the expiration of the retention period for the records required to be maintained under paragraph (1) of this section, the employer shall transmit these records by mail to the Director.

(m) *Observation of monitoring.*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe any measuring or monitoring of employee exposure to benzene conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) When observation of the measuring or monitoring of employee exposure to benzene requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the measurement, observers shall be entitled to:

(a) Receive an explanation of the measurement procedures;

(b) Observe all steps related to the measurement of airborne concentrations of benzene performed at the place of exposure; and

(c) Record the results obtained.

(n) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations.

APPENDIX A—SUBSTANCE SAFETY DATA SHEET, BENZENE

I. SUBSTANCE IDENTIFICATION

A. *Substance.* Benzene.

B. *Permissible Exposure:* Except as to the use as fuels of gasoline, motor fuels and other fuels subsequent to discharge from bulk terminals.

1. *Airborne.* 1 part of benzene vapor per million parts of air (1 ppm); time-weighted average (TWA) for an 8-hour workday for a 40-hour week, with a 15 minute ceiling concentration of 5 ppm.

2. *Dermal.* Eye contact and skin contact with liquid benzene shall be prohibited.

C. *Appearance and odor.* Benzene is a clear, colorless liquid with a pleasant, sweet odor. The odor of benzene does not provide adequate warning of its hazard.

II. HEALTH HAZARD DATA

A. *Ways in which the benzene affects your health.* Benzene can affect your health if you inhale it, or if it comes in contact with your skin or eyes. Benzene is also harmful if you happen to swallow it.

B. *Effects of overexposure.* 1. Short-term (acute) overexposure: If you are overex-

posed to high concentrations of benzene, well above the levels where its odors are first recognizable, you may feel breathless, irritable, euphoric, or giddy; you may experience irritation in eyes, nose, and respiratory tract. You may develop a headache, feel dizzy, nauseous, or experience unsteadiness in walking. Severe exposures may lead to convulsions.

2. *Long-term (chronic) exposure.* Repeated or prolonged exposure to benzene, even at relatively low concentrations, may result in various blood disorders, ranging from anemia to leukemia, an irreversible, fatal disease. Many blood disorders associated with benzene exposure may occur without physical symptoms.

III. PROTECTIVE CLOTHING AND EQUIPMENT

A. *Respirators.* Respirators are required for those operations in which engineering controls or work practice controls are not feasible to reduce exposure to the permissible level. If respirators are worn, they must have a National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridges or canisters must be replaced before the end of their service life, or the end of the shift, whichever occurs first. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. *Protective Clothing.* You must wear impervious protective clothing (such as boots, gloves, sleeves, aprons, etc.) over any parts of your body that could be exposed to liquid benzene.

C. *Eye and Face Protection.* You must wear splash proof safety goggles if it is possible that benzene may get into your eyes. In addition, you must wear a face shield if your face could be splashed with benzene liquid.

IV. EMERGENCY AND FIRST AID PROCEDURES

A. *Eye and face exposure.* If benzene is splashed in your eyes, wash it out immediately with large amounts of water. Call a doctor as soon as possible.

B. *Skin exposure.* If benzene is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of water and soap immediately. Wash contaminated clothing before you wear it again.

C. *Breathing.* If you or any other person breathes in large amounts of benzene, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible.

D. *Swallowing.* If benzene has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. MEDICAL REQUIREMENTS

If you are exposed to benzene at a concentration at or above 0.5 ppm on an 8-hour time-weighted average, your employer is required to provide a medical history and laboratory tests within 30 days of the effective date of this standard and semiannually thereafter if you are continually exposed at or above 0.5 ppm. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to benzene (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to be toxic exposure to benzene, your employer is required to make special tests available to you.

VI. OBSERVATION OF MONITORING

Your employer is required to perform measurements that are representative of your exposure to benzene and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to receive an explanation of the measurement procedure, observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear the protective clothing and equipment.

VII. ACCESS TO RECORDS

You or your representative are entitled to see the records of measurements of your exposure to benzene upon request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request to your employer.

VIII. PRECAUTIONS FOR SAFE USE, HANDLING AND STORAGE

Benzene liquid is highly flammable. It should be stored in tightly closed containers in a cool, well ventilated area. Benzene vapor may form explosive mixtures in air. All sources of ignition must be controlled. Use nonsparking tools when opening or closing benzene containers. Ground or bond metal benzene containers. Fire extinguishers, where provided, must be readily available. Know where they are located and how to operate them. Smoking is prohibited in areas where benzene is used or stored. Ask your supervisor where benzene is used in your work area and for additional plant safety rules.

APPENDIX B—SUBSTANCE TECHNICAL GUIDELINES, BENZENE

I. PHYSICAL AND CHEMICAL DATA

A. Substance identification.

1. Synonyms: Benzol, benzole, coal naphtha, cyclohexatriene, phenyl hydride, pyrobenzol. (Benzene, petroleum benzene, and benzine do not contain benzene.)

2. Formula: C_6H_6 (CAS Registry Number: 000071432)

B. Physical data.

- Boiling Point (760 mm Hg): 80.1°C (176°F)
- Specific Gravity (water = 1): 0.879
- Vapor Density (air = 1): 2.7
- Melting Point: 5.5°C (42°F)
- Vapor Pressure at 20°C (68°F): 75 mm Hg
- Solubility in Water: .06%
- Evaporation Rate (ether = 1): 2.8
- Appearance and Odor: Clear, colorless liquid with a distinctive sweet odor.

II. FIRE, EXPLOSION, AND REACTIVITY HAZARD DATA

A. Fire.

- Flash Point (closed cup): -11°C (12°F)
- Autoignition Temperature: 580°C (1076°F)
- Flammable Limits in Air, % by Volume: Lower 1.3%, Upper: 7.5%
- Extinguishing Media: Carbon dioxide, dry chemical, or foam.
- Special Fire-Fighting Procedures: Do not use solid stream of water, since stream will scatter and spread fire. Water spray can be used to keep fire exposed containers cool.
- Unusual fire and explosion hazards: Benzene is a flammable liquid. Its vapors

can form explosive mixtures. All ignition sources must be controlled when benzene is used, handled, or stored. Where liquid or vapor may be released, such areas shall be considered as hazardous locations. Benzene vapors are heavier than air; thus the vapors may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which benzene is handled.

7. Benzene is classified as a *1 B flammable liquid* for the purpose of conforming to the requirements of 29 CFR 1910.106. A concentration exceeding 3250 ppm is considered a potential fire explosion hazard. Locations where benzene may be present in quantities sufficient to produce explosive or ignitable mixtures are considered *Class I Group D* for the purposes of conforming to the requirement of 29 CFR 1910.309.

B. Reactivity.

- Conditions contributing to instability: Heat.
- Incompatibility: Heat and oxidizing materials.
- Hazardous decomposition products: Toxic gases and vapors (such as carbon monoxide).

III. SPILL AND LEAK PROCEDURES

A. Steps to be taken if the material is released or spilled. As much benzene as possible should be absorbed with suitable materials, such as dry sand or earth. That remaining must be flushed with large amounts of water. Do not flush benzene into a confined space, such as a sewer, because of explosion danger. Remove all ignition sources. Ventilate enclosed places.

B. Waste disposal method. Disposal methods must conform to other jurisdictional regulations. If allowed, benzene may be disposed of: (a) Absorbing it in dry sand or earth and disposing in a sanitary land fill; (b) if small quantities, by removing it to a safe location from buildings or other combustible sources, pouring it in dry sand or earth and cautiously igniting it; (c) if large quantities, by atomizing it in a suitable combustion chamber.

IV. MONITORING AND MEASUREMENT PROCEDURES

A. Normal monitoring program. Measurements taken from the purpose of determining employee exposure are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would nearly represent that inhaled by the employee). Sampling must be performed by gas adsorption tubes or alternative methods meeting the requirements of the standard with subsequent chemical analysis, by gas chromatography. Methods meeting the prescribed accuracy and precision and requirements are available in the "NIOSH manual of Analytical Methods."

V. MISCELLANEOUS PRECAUTIONS

A. High exposures to benzene can occur when transferring the liquid from one container to another. Such operations should be well ventilated and good work practices must be established to avoid spills.

B. Use non-sparking tools to open benzene containers which are effectively grounded and bonded prior to opening and pouring.

C. Employers must advise employees of all plant areas and operations where exposure to benzene could occur. Common operations in which high exposures to benzene may be encountered are: the primary production and utilization of benzene, and transfer of benzene.

APPENDIX C—MEDICAL SURVEILLANCE GUIDELINES FOR BENZENE

I. ROUTE OF ENTRY

Inhalation; possible skin absorption.

II. TOXICOLOGY

Benzene is primarily an inhalation hazard. Systemic absorption may cause depression of the hematopoietic system and leukemia. Inhalation of high concentrations can affect the central nervous system function. Aspiration of small amounts of liquid benzene immediately causes pulmonary edema and hemorrhage of pulmonary tissue. The extent of absorption through the skin is unknown. However, absorption may be accelerated in the case of injured skin, and benzene may be more readily absorbed if it is present in a mixture or as a contaminant in solvents which are readily absorbed. Defatting action of benzene may produce primary irritation upon repeated or prolonged contact with the skin. High concentrations are irritating to the mucous membranes of the eyes, nose, and respiratory tract.

III. SIGNS AND SYMPTOMS

It is not clear to what extent benzene is absorbed through the skin, however, direct contact may cause erythema or blistering. Repeated or prolonged contact may result in drying, scaling dermatitis, or precipitate development of secondary skin infections. Local effects of benzene vapor or liquid on the eye are slight. Only at very high concentrations is there any smarting sensation in the eye. Inhalation of high concentrations of benzene may have an initial stimulatory effect on the central nervous system characterized by exhilaration, nervous excitation, and/or giddiness, followed by a period of depression, drowsiness, fatigue, or vertigo. There may be sensation of tightness in the chest accompanied by breathlessness and ultimately the victim may lose consciousness. Convulsions and tremors occur frequently, and death may follow from respiratory paralysis or circulatory collapse in a few minutes to several hours following severe exposures.

The insidious effect on the blood-forming system of prolonged exposure to small quantities of benzene vapor is of extreme importance. The hematopoietic system is the chief target for benzene's toxic effects which are manifested by alterations in the levels of formed elements in the peripheral blood. These effects have been noted to occur at concentrations of benzene which may not cause irritation of mucous membranes, or any unpleasant sensory effects. Early signs and symptoms of benzene morbidity are varied and often not overtly apparent and not specific for benzene exposure. Subjective complaints of headache,

dizziness, and loss of appetite may precede or follow clinical symptomatology. Bleeding from the nose, gums, or mucous membranes and the development of purpuric spots may occur as the condition progresses. Rapid pulse and low blood pressure in addition to a physical appearance of anemia may accompany a subjective complaint of shortness of breath. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, have been frequently reported.

Bone marrow may appear normal, aplastic, or hyperplastic and may not in all situations correlate with peripheral blood forming tissues. There are great variations in the susceptibility to benzene morbidity which prohibits the identification of "typical" blood picture. The onset of effects of prolonged benzene exposure may be significantly delayed after the actual exposure has ceased.

IV. TREATMENT OF ACUTE TOXIC EFFECTS

Remove from exposure immediately, give oxygen or artificial resuscitation if indicated. Flush eyes and wash contaminated skin. Symptoms of non-specific nervous disturbances may persist following severe exposures. Recovery from mild exposures is usually rapid and complete.

V. SURVEILLANCE AND PREVENTIVE CONSIDERATIONS

A. GENERAL

The principal effects of benzene exposure forming the basis for this regulation are alterations of the hematopoietic system as reflected by changes in the peripheral blood and leukemia. Consequently, the medical surveillance protocol is designed to observe on a regular basis, blood indices for early signs of these effects.

Tests must be performed frequently enough to discover individuals who may be unusually sensitive and likely to develop marrow abnormalities, to monitor those who experience accidental overexposure and to provide early detection of delayed evidence of toxicity.

All workers who are or will be exposed to 0.5 parts per million (ppm) or greater benzene as an eight-hour time-weighted average are to be given the opportunity for a medical examination. Initial examinations are to be provided within 30 days of the effective date of this standard or at the time of initial assignment and interval examinations semi-annually thereafter. There are special provisions for medical tests in the event of hematologic abnormalities or for emergency situations.

F. HEMATOLOGY GUIDELINES

The following information excerpted from the analysis of Dr. Jandl, Chief of Hematology, Harvard School of Medicine, may be useful to physicians in conducting the medical surveillance program.

"A minimum battery of tests is to be performed by strictly standardized methods in the circumstances described above.

1. Red cell, white cell, and platelet counts must be performed using an automated (Coulter) counter. The normal range for the red cell count is approximately 4.4 to 6.0 million cells/mm³, the values for women being about 0.4 million cells lower than for men. A decline from a normal to a subnormal value, or a rise to a supra-normal value, are indicative of potential toxicity, particularly should there be a decline. The normal

total white blood count is approximately 6,200 plus or minus 2,000/mm³. For cigarette smokers and white count will be higher, the upper range of "normal" being approximately 1,000 cells higher than 8,200. Either a decline from normal to subnormal or a rise from normal to supra-normal, should be regarded as a potential indication of benzene toxicity. The normal platelet count is 250,000 with a range of 140,000 to (at most) 400,000/mm³. A decline to below 140,000 or a rise to above 400,000 should be regarded as possible evidence of benzene toxicity.

The reticulocyte count is performed by technical assistants using a cover-slip smear (see below). In my opinion, the preferred technique for this purpose is the so-called "dry-method" employing brilliant cresyl blue (BCB) for staining the filaments of reticulum within red cell, and counter-staining with Wright's stain. The extreme range of normal for reticulocytes is 0.4 to 1.5 percent of the red cells, the usual range being 0.5 to 1.2 percent of the red cells, but the typical value is in the range of 0.8 to 1.0 percent. There is an advantage of using the BCB reticulocyte staining technique (followed by counter-staining with Wright's stain) in that visible evidence (i.e., the stained, mounted reticulocyte smears) may be stored, and if kept filed in the dark may later be retrieved for reexamination and comparisons. A decline in reticulocytes to levels of less than 0.4 percent is to be regarded as possible evidence (unless another specific cause is found) of benzene toxicity requiring accelerated surveillance. An increase in reticulocyte levels to above 1.5 percent may also be consistent with (but is not as characteristic of) benzene toxicity.

2. The single most important routine surveillance test is an expert technician's careful examination of the peripheral blood smear. As with the reticulocyte count, the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may under certain limited conditions be made from a blood sample anticoagulated with EDTA (but never with oxalate or heparin). When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer[®] type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to 12 hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature. As with the reticulocyte preparations, the smear should be made on cover slips only. Under no circumstances should peripheral blood (or bone marrow aspirate) intended for examination be smeared on microscope slides, a technique which produces artifacts in blood cells and distorts the white cell differential count by severely maldistributing them. Dry blood smears should be stained with Wright's stain which should be filtered at least weekly to remove precipitated dye (saturated completely by methylene blue-eosinate derivatives).

3. The minimum mandatory observations to be made from the smear and a discussion of their significance now follows. The observations are four:

- a. The differential white blood cell count.
- b. Description of abnormalities in the appearance of red cells.
- c. Description of any abnormalities in the platelets.

d. A careful search must be made by the technician throughout the better areas of every blood smear for immature white cells such as band forms (in more than normal proportion), any number of metamyelocytes, myelocytes. Any nucleated or multinucleated red blood cells should be reported. Very large "giant" platelets of fragments of megakaryocytes must be recognized. Should only a single one of these abnormalities be found, it should be reported.

An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention for it represents a very early change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes in the absence of other probable cause is to be considered a possible indication of benzene-induced injury.

An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but also may be suspicious of toxicity if it rises above 6.0 percent of the total white count.

The normal range of monocytes is from 2.0 to 8.0 percent of the total white count an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persisting monocytosis which is sometimes striking. The findings of a monocyte count which persists at more than 10 to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess 800/mm³ should be regarded as a possible sign of benzene-induced injury.

A less frequent but more serious indication of benzene-induced injury to the bone marrow is the findings in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segments—less often one or three round segments—rather than three normally elongated segments. When this anomaly is not hereditary, it is often but not invariably predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop acute myelogenous leukemia show the acquired Pelger-Huet anomaly.

An uncommon but ominous sign, one which cannot be detected from the smear, but can be suspected easily by a "sucrose water test" or peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH), which may first occur insidiously during a period of established aplastic anemia and maybe followed within one to a few years by the appearance of rapidly fatal acute myelogenous leukemia. Clinical detection of PNH, which occurs in perhaps only one or two percent of those destined to have acute myelogenous leukemia, may be difficult; if the presumptive "sucrose water test" for it is positive, the technician may perform the somewhat more definitive Ham test, also known as the acid-serum hemolysis test.

e. Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene, have (see above) progressed through preliminary phases of hematologic abnormality. In

many instances pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin—but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years. Seldom does relative scarcity of a single type blood cell (or of platelets) represent a harbinger of imminent acute leukemia. However, the finding of two or more cytopenias, or of pancytopenia, must be regarded as highly suspicious of more advance although still reversible, benzene toxicity. When "pancytopenia" develops and becomes associated with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.), with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.), or with inappropriate elevations of monocytes, basophils, or eosinophils, the findings must be regarded as evidence of benzene overexposure unless proved otherwise. These and other aggregates of alterations are frequently term "preleukemia," a term whose meaning is good when used retrospectively, but less good when used prospectively where it has only inferential value. Many severely aplastic patients manifested the ominous finding of 5-10 percent myeloblasts in the marrow, occasional myeloblasts and myelocytes in the blood and 20-30% monocytes;

these represented the beginning of recovery rather than the early stage of overt AML. Thus, a considerable proportion of "preleukemias" in benzene poisoning fail to progress to leukemia. Indeed, some have been observed to revert to normal after withdrawal of the afflicted person from toxic exposure. Nonetheless, the chance that "preleukemic" (changes in general) will evolve to leukemia is considerable: at least 20 to 40 percent of persons (only a few of whom were benzene-exposed) with these blood changes develop acute myelogenous leukemia. Certain tests may substantiate the person's prospects for progression or regression. One such test would be an examination of patient's bone marrow. But the decision to perform a bone marrow aspiration or needle biopsy is one that should be made by the hematologist. The findings to be sought there would be: hypoplasia or aplasia; an excess of immature forms; vacuolation in erythroblasts and myelocytes—a phenomenon induced by many toxins apart from benzene, including chloramphenicol and alcohol; and by infections.

The findings of basophilic stippling in circulating red blood cells (usually found in 1 to 5% of red cell during marrow injury), and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken

seriously, as they have been noted in recent years to be frequent premonitory signs of subsequent acute leukemia.

In several recent reports dealing with relatively few patients, peroxidase-staining of circulating or marrow neutrophil granules, employing benzidine dihydrochloride, has revealed as a "preleukemic" finding the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase is also suggestive of early acute leukemia. Exposure to benzene commonly causes an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus serial measurements of serum iron levels provide a means of determining whether or not there is a trend representing sustained suppress of erythropoiesis.

Measurement of serum iron, determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed by technical assistants.

(Secs. 4, 6, 8, 84 Stat. 1593, (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR part 1911.)

[FR Doc. 78-3417 Filed 2-3-78; 1:12 pm]

FRIDAY, FEBRUARY 10, 1978
PART III



**DEPARTMENT OF
LABOR**

**Employment Standards
Administration**

**MINIMUM WAGES FOR
FEDERAL AND
FEDERALLY ASSISTED
CONSTRUCTION**

**General Wage Determination
Decisions**

Registered
Federal

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND
FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of

publication in the FEDERAL REGISTER without limitation as to time, and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama: AL77-1085, July 22, 1977.
Arkansas: AR77-4285, AR77-4286, September 30, 1977.
Georgia: GA77-1103, GA77-1104, GA77-1111, August 26, 1977; GA77-1139, November 11, 1977.
Kentucky: KY77-1134, November 11, 1977.
Maryland: MD77-3000, January 27, 1977.
Mississippi: MS76-1004, January 9, 1976.
Nebraska: NE77-4281, NE77-4282, September 30, 1977.
New Jersey: NJ77-3093, July 8, 1977.
North Dakota: ND77-5099, December 2, 1977.
Oklahoma: OK77-4273, OK77-4274, September 30, 1977.
Virginia: VA77-3082, June 24, 1977; VA77-3088, VA77-3090, July 1, 1977.
Wyoming: WY78-5008, January 27, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Kansas: KS77-4079(KS78-4010), April 5, 1977.
New Mexico: NM77-4039(NM78-4011), February 18, 1977; NM77-4218(NM78-4012), September 9, 1977.
Ohio: OH77-2073(OH78-2003), OH77-2076(OH78-2002), OH77-2080(OH78-2004), May 13, 1977; OH77-2133(OH78-2005), September 2, 1977.

Signed at Washington, D.C. this 3d day of February 1978.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

NOTICES

5973

DECISION # AL77-1085 - Mod. # 3 (42 FR-37715 - July 22, 1977) Mobile County, Alabama	Fringe Benefits Payments				Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacation	
Change: Sheet Metal Workers	10.98	.50	.60		.04
DECISION NO. AR77-4285 - MOD. #4 (42 FR 52898 - September 30, 1977) Garland, Hot Springs and Clark Counties, Arkansas					
CHANGE: Line Construction: Linemen Cable splicers Plumbers - Pipefitter: Zone A Zone B Zone C	10.975 11.10 9.70 10.35 10.90	.55 .55 .55	.50 .50 .50	3% 3%	$\frac{1}{2}\%$ $\frac{1}{2}\%$.10 .10 .10
DECISION NO. AR77-4286 - MOD. #4 (42 FR 52900 - September 30, 1977) Union & Quachita Counties, Arkansas					
CHANGE: Plumber & Pipefitters	10.70	.45	.55		.05
DECISION #GA77-1103 - Mod. #1 (42 FR 43322 - August 26, 1977) Chatham County, Georgia					
Change: DESCRIPTION OF WORK: Highway Construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).					
DECISION #GA77-1104 - Mod. #1 (42 FR 43322 - August 26, 1977) Parks, Barrow, Bartow, Catocosa, Chattooga, Cherokee, Cobb, Dade, Dawson, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Jackson, Lumpkin, Madison, Murray, Paul- ding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield Counties, Georgia					
Change: DESCRIPTION OF WORK: Highway Construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).					

DECISION #GA77-1111 - Mod. #1
(42 FR 43323 - August 26, 1977)
Applying, Atkinson, Bacon, Baker,
Baldwin, Ben Hill, Berrien, Bibb,
Bleckley, Brantley, Brooks, Bryan,
Bulloch, Burke, Butts, Calhoun,
Camden, Candler, Carroll, Charlton,
Chattahoochee, Clarke, Clay, Clay-
ton, Clinch, Coffee, Colquitt,
Columbia, Cook, Coweta, Crawford,
Crisp, Decatur, Dodge, Dooly,
Dougherty, Early, Echols, Effing-
ham, Emanuel, Evans, Fayette,
Glascok, Glynn, Grady, Greene,
Hancock, Harris, Heard, Henry,
Houston, Irwin, Jasper, Jeff,
Davis, Jefferson, Jenkins, John-
son, Jones, Lamar, Lanier, Laur-
ens, Lee, Liberty, Lincoln, Long,
Lowndes, Macon, Marion, McDuffie,
McIntosh, Meriwether, Miller,
Mitchell, Monroe, Montgomery,
Morgan, Muscogee, Newton, Oconee,
Oglethorpe, Peach, Pierce, Pike,
Pulaski, Putnam, Quitman, Randolph,
Richmond, Rockdale, Schley, Screven,
Seminole, Spalding, Stewart, Sumter,
Talbot, Taliaferro, Tattnall, Taylor,
Telfair, Terrell, Thomas, Tift,
Toombs, Treutlen, Troop, Turner,
Twiggs, Upson, Walton, Ware, Warren,
Washington, Wayne, Webster, Wheeler,
Wilcox, Wilkes, Wilkinson, Worth
Counties, Georgia

Change:

DESCRIPTION OF WORK: Highway Construction (does not include bridges over
navigable waters; tunnels; rest areas which include building structures;
railroad construction; and paving associated with building construction).

Add:

Electricians - Clayton County \$10.45 9% 11% $\frac{1}{2}$ of 1%

MODIFICATIONS P. 4

DECISION (MS76-1004-Mod. #3 (41 FR-1695 - January 9, 1976) Washington, Sunflower and Coahoma Counties, Mississippi	Fringe Benefits Payments				Education and/or Appt. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacation	
Change Counties To: Washington, Sunflower, and Coahoma Counties, Mississippi					
Decision #1977-4281-Mod. #1 (42 FR 53087-September 30, 1977)-Lancaster County, NE					
Decision #1977-4282-Mod. #2 (42 FR 53089-September 30, 1977)-Douglas, Barry, Otoe Counties, Nebraska					
Change: LINE CONSTRUCTION:					
Lineman	\$10.27	.45	3%	D	1%
Cable Splicers	11.04	.45	3%	D	3%
Truck Driver	7.42	.45	3%	D	3%
Equipment Operator	9.24	.45	3%	D	3%
GROUNDMEN:					
(Inexperienced) 1st 6 months	3.42	.45	3%	D	1%
(Inexperienced) 2nd 6 months	5.04	.45	3%	D	3%
Thereafter	6.70	.45	3%	D	3%
NOTE: Employees covered by this agreement who are on the employer's payroll on the scheduled work day immediately preceding or following the holidays of July Fourth, Labor Day, Thanksgiving, Friday after Thanksgiving, and Christmas Day, or days celebrated as such holidays, shall receive eight hours pay at straight-time rate for such holidays.					
DECISION #1977-3093 - Mod. #7 (42 FR 35567 - July 8, 1977) Bergen, Essex, Hudson, Hunterdon Middlesex, Morris, Passaic, Somerset, Sussex, Union & Warren Counties, New Jersey					
Change: Electricians & Cable Splicers:					
Zone 5	\$12.80	10%	92+.58		1.5%
Zone 7	13.10	6%	3%+.60		
Glaziers					
Zone 3	11.95	1.00	1.50		.05
Laborers, Building Construction					
Zone 14 - Somerset (Townships of Basking Ridge, Bedminster, Bernards, Bernardsville, Far Hills, Gladstone, Liberty Corners, Lyons (Veterans Hospital), Peapack, Pinebrook County					
Common Laborers	7.95	.70	.60		.02

MODIFICATIONS P. 3

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Fr.
	H & W	Pensions	Vacation	
DECISION #8477-1139 - Mod. #1 (42 FR 58926 - November 11, 1977) DeKalb & Fulton Counties, Georgia				
Change:				
DESCRIPTION OF WORK: Highway Construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).				
Electricians	\$10.45	9%	1%	$\frac{1}{2}$ of 1%
DECISION #KY77-1134 - Mod. #1 (42 FR 58926 - November 11, 1977) Adair, Barren, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Estill, Floyd, Garrard, Green, Harlan, Hart, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, McCreary, Magoffin, Martin, Menifee, Metcalfe, Monroe, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Taylor, Wayne, Whitley, Wolfe Counties, Kentucky				
Change:				
DESCRIPTION OF WORK: Highway Construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).				
DECISION #MD78-3000 - MOD. #1 (43 FR - 3867 - January 27, 1978)				
Cecil, Caroline, Dorchester, Harford, Kent, Queen Annes, Talbot, Wicomico, and Worcester Counties, Maryland				
ADD: Counties: Somerset County				

NOTICES

5975

DECISION #ND77-5099 - Mod. #1 (42 FR 61437 - December 2, 1977) Statewide, North Dakota	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Omit: "Airport runways and taxiways" from description of work					
CHANGE: DECISION NO. OK77-4274 - MOD. #5 (42 FR 53091 - September 30, 1977) Oklahoma, Cleveland, Caddo, Grady Canadian, Kingfisher, Logan, Lincoln, McClain, Seminole and Pottawatomie Counties, Oklahoma	10.35 10.60 10.85 10.60 10.85 11.10	.70 .70 .70 .70 .70 .70	3%+.50 3%+.50 3%+.50 3%+.50 3%+.50 3%+.50		1% 1% 1% 1% 1% 1%
CHANGE: DECISION NO. OK77-4273 - MOD. #5 (42 FR 53091 - September 30, 1977) Oklahoma, Cleveland, Caddo, Grady Canadian, Kingfisher, Logan, Lincoln, McClain, Seminole and Pottawatomie Counties, Oklahoma	10.35 10.60 10.85 10.60 10.85 11.10	.70 .70 .70 .70 .70 .70	3%+.50 3%+.50 3%+.50 3%+.50 3%+.50 3%+.50		1% 1% 1% 1% 1% 1%

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
DECISION NO. VA77-3082-Mod. #3 (42 FR 32510-June 24, 1977) The Independent Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach, Virginia.						
Change: DESCRIPTION OF WORK: Highway construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).						
DECISION NO. VA77-3088-Mod. #3 (42 FR 34261-July 1, 1977) Radford Army Ammunition Plant, Virginia.	\$9.15	.30	.55		.04	
Change: Sheet Metal Workers						
DECISION NO. VA77-3090-Mod. #3 (42 FR 34264-July 1, 1977) The Independent Cities of Norfolk, Chesapeake, Portsmouth, and Virginia Beach, Virginia.						
Change: Lathers Sheet Metal Workers	9.75 9.65	.55	.25 .55		.09	
DECISION #WV78-5008 - Mod. #1 (43 FR 3868 - January 27, 1978) Statewide, Wyoming						
Omit: "Airport runways and taxiways" from description of work						

DECISION NO. KS78-4010

STATE: Kansas
 DECISION NO. KS78-4010
 COUNTY: Shawnee
 DATE: Date of Publication
 Superseded Decision No. KS77-4079, dated April 8, 1977 in 42 FR 18803
 DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Fringe Benefits Payments				Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$11.77	.60	1.55		.05
BOILERMAKERS	11.00	1.15	1.00		.02
BRICKLAYERS: STONEMASONS	9.89	.40	.25		
CARPENTERS:					
Carpenters	8.90	.40	.35		.05
Millwrights; Piledrivermen	9.275	.40	.35		.05
CEMENT MASONS:					
Cement masons	8.85	.40	.35		
Machine operators:	8.975	.40	.35		
Composition color or chloride addition	9.05	.40	.35		
ELECTRICIANS	7.60	.45	3%*.20		.05
IRONWORKERS	9.60	.70	1.00		.05
LABORERS (Building Construction)					
General laborer	7.65	.40	.35		.10
Power tool operators, compactors					
concrete breakers, chipping					
tools, drilling tools, concrete					
saws, mechanically operated,					
Georgia buggy	7.85	.40	.35		.05
Mason tenders, plaster tenders					
mortar mixer for plaster					
masons and cement finishers,					
all stocking scaffold, clean					
up for masons (building and					
wrecking)	7.95	.40	.35		.05
Sand and concrete gun nozzleman					
and powderman	8.05	.40	.35		.05
LABORERS (Site Preparation and Grading):					
Group 1	6.80	.40	.35		.05
Group 2	6.95	.40	.35		.05
Group 3	7.05	.40	.35		.05
Group 4	7.20	.40	.35		.05
Group 5	7.30	.40	.35		.05

CLASSIFICATION DEFINITIONS

LABORERS (Site Preparation and Grading):
 Group 1 - Board mat weavers and cable tiers; Georgia buggy (manually operated); mixerman - no skip; lift; nailers, salamander tenders; track men; tractor swamper; truck dumper, wire mesh settler, water pump up to 4 inches; and all other general laborer including flagman
 Group 2 - Air tool operators, cement handlers (bulk), chain saw, Georgia buggy (mechanically operated); grade man, hot mastic kettlemen, crusher feeder, joint man, jute man; mason tender; material batch hooper and scale man; mixer man; pier hole man working 10 ft. deep; pipelayer-drainage (concrete and/or corrugated metal); signal man (crane), truck dumper-dry batch; vibrator operator; wagon and churn drill operator
 Group 3 - Asphalt raker, barco tamper; concrete saw; crescent material-handling and applying; nozzle burner (cutting torch and burning bar)

Group 4 - Conduit pipe; tile and duct line setter; form setter and liner on concrete paving; powderman; sandblasting and gunite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution lines
 Group 5 - Leadman or pusher

	Fringe Benefits Payments				Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacation	
LATHERS	9.70		.20		
PAINTERS:					
Brush, drywall, sanding and taping, roller	9.90	.45			.02
Painting of structures over 50' (all types); spray	10.40	.45			.02
PLASTERERS	9.25		.20		
PLUMBERS: Pipefitters	11.43	.75	.65		.04
POWER EQUIPMENT OPERATORS: (Building Construction):					
Group 1	10.10	.50	1.00	.75	.10
Group 2	9.70	.50	1.00	.75	.10
Group 3					
(a)	8.65	.50	1.00	.75	.10
(b)	8.90	.50	1.00	.75	.10
Group 4					
(a)	8.10	.50	1.00	.75	.10
(b)	8.35	.50	1.00	.75	.10
Group 5	10.60	.50	1.00	.75	.10
Group 6	10.35	.50	1.00	.75	.10
Group 7	10.60	.50	1.00	.75	.10
Group 8	11.10	.50	1.00	.75	.10
Group 9	12.10	.50	1.00	.75	.10

POWER EQUIPMENT OPERATORS (Building Construction)

CLASSIFICATION DEFINITIONS

Group 1 - Boilers (2); boom cat, boring machine, ditching machine, concrete ready-mix plant; crane, truck crane, clamshell, dragline, dozer, scraper, all types patrol, firemen (when operating steam or air valve); gradall, hi-loaders (over 1 yd); hoist, two; locomotive; mechanic or welder; mixer-mobiler; paver, or any other machine with power swing; piledriver operator; power shovel; pump, concrete or other material
 Group 2 - A-frame truck; barber greene loader or similar type; bob cat hi-loaders (1 yd. and under); boiler (1); ditching machine-small; elevator operator; firemen; fork lift; greaser, equipment; hoist, one active drum; hydra hammer; jeep ditcher; mixer, other than paver; power broom, pump, 4" or larger, small machine engineer; welding machine (1)
 Group 3 - (a) Farm tractor (without attachments)
 (b) Farm tractor (with attachments)
 Group 4 - (a) Oiler
 (b) Motor crane roller
 Group 5 - Tower cranes and derricks; franki-type piledriving machines; (4) drum hoist
 Group 6 - Crane & shovels 100 ft of boom or over (including jib) or 2 yds capacity or over or 30 tons or over; (3) drum hoist

Group 7 - Crane & shovels booms 200 ft and over
 Group 8 - Cranes with lifting ring
 Group 9 - Master mechanic
 Hoist each additional drum over two - an additional .25¢

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
POWER EQUIPMENT OPERATORS						
Site Preparation and Grading						
Group 1	8.35	.50	1.00	.75		.10
Group 2	8.10	.50	1.00	.75		.10
Group 3	7.85	.50	1.00	.75		.10
Group 4	7.50	.50	1.00	.75		.10
Group 5	7.60	.50	1.00	.75		.10
Group 6	8.60	.50	1.00	.75		.10

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS (Site Preparation and Grading):

Group 1 - Asphalt paver and spreader, backhoe, boring machine, blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader, all types; mechanic or welder; mixer-mobile; multi-unit scraper; pile driver operator; power shovel operator; quad track; scoop operator, all types; side boom cat-cherry picker; skimmer scoop operator; pushcat operator

Group 2 - Asphalt plant operator; elevating grader operator

Group 3 - A-frame truck; asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber greene loader; boiler - other than asphalt; bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator, distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist 1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredge; screening and wash plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphon and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operators; vibrating machine operator, not hand

Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc seeder; oiler; tractor operator, 50 h.p. or less without attachments

Group 5 - Oiler, motor crane

Group 6 - Master mechanic

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
ROOFERS:						
Roofers flat slate and tile, dampproofers	10.56		.60	a		
Roofers working in pitch, tar or creosote, coal	11.11		.60	a		
FOOTNOTE: A - after 6 months of employment .26¢ after 5 years .52¢						
SHEET METAL WORKERS	10.34	.32+.50	1.29			.04
SOFT FLOOR LAYERS	8.53	.45	.45	10%		.04
SPRINKLER FITTERS	11.48	.65	.95			.08
TILE SETTERS	9.00					
TRUCK DRIVERS (Building Constructing)						
Light, pickups, station wagons	7.875	.40	.35			
Medium flat beds and jumps, 5 tons or less; warehousemen and partsmen	7.975	.40	.35			
Truck over 5 tons and semi trailers	8.225	.40	.35			
TRUCK DRIVERS (Site Preparation and Grading)						
Group 1	6.90	.40	.35			
Group 2	7.00	.40	.35			
Group 3	7.15	.40	.35			

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Group 1 - pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen

Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tounarockers; atheys; dumpers and similar off-road equipment and mechanics on such equipment

WELDERS: Recieve rates prescribed for craft performing operation to which welding is incidental.

SUPERSEDEAS DECISION

STATE: New Mexico
 COUNTY: Dona Ana and Otero
 DECISION NO. NM78-4011
 DATE: Date of Publication
 SUPERSEDEAS DECISION NO. NM77-4039 dated February 18, 1977 in 43 FR 10254.
 DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
BRICKLAYERS	\$7.09	.43				.12
CARPENTERS	6.44	.47	.45			
CEMENT MASONS	6.17					
ELECTRICIANS	7.80	.25	12			12
LABORERS	4.08					
PAINTERS, BRUSH	5.83					
PLASTERERS	6.50	.63	.25			.16
PLUMBERS	6.50					
ROOFERS	5.70					
SHEET METAL WORKERS	7.23					
STONEMASONS	5.00					
SOFT FLOOR LAYERS	5.00					
TILE SETTERS	5.00					
TRUCK DRIVERS	4.68					
POWER EQUIPMENT OPERATORS:						
Grader	5.36					
Mechanic	5.65					
Tractor	5.43					
Trenching machine	6.81					

STATE: New Mexico
 COUNTY: Statewide
 DECISION NO. NM78-4012
 DATE: Date of Publication
 SUPERSEDEAS DECISION NO. NM77-4218 dated September 9, 1977 in 42 FR 45589
 DESCRIPTION OF WORK: BUILDING AND HEAVY CONSTRUCTION (also, including RESIDENTIAL CONSTRUCTION in Santa Fe, Bernalillo, Rio Arriba, Taos, Sandoval and Valencia Counties).

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
BUILDING & HEAVY CONSTRUCTION						
ASBESTOS WORKERS:						
(Statewide, except Union, Lea, Harding, Curry, Roosevelt and Quay Counties)	\$11.56	.50	1.27a			.06
Union, Harding, Lea, Roosevelt, Curry and Quay Counties	10.00	.65	.55			.07
BRICKLAYERS	9.625	.775	1.00	.50		.02
BRICKLAYERS-STONEMASONS:						
Zone I-A	10.01	.57	.50			.10
Zone I-B	11.01	.57	.50			.10
Zone I-C	11.51	.57	.50			.10
Zone II	9.96	.57	.40			.10
Zone III	10.71	.57	.40			.10
Zone IV	10.16	.57	.30			.10
Zone V	10.91	.57	.30			.10
Zone VI	9.36	.57	.30			.10
Zone VII	10.16	.57	.20			.10
Zone VIII	10.44	.67	.20			.10
Zone IX	9.44	.67	.20			.10

BRICKLAYERS' ZONE DEFINITIONS

ZONE I - Union, Harding, Santa Fe, Valencia, Torrence, Taos, Socorro, Mora, McKinley, Colfax, Catron, San Miguel, San Juan, Sandoval, Rio Arriba, Bernalillo and Los Alamos Counties

From basing point of Albuquerque Main Post Office:

Zone I-A - 0 to 25 road miles

Zone I-B - 25 to 50 road miles

Zone I-C - Over 50 road miles

ZONE II - Curry, and Roosevelt Counties

ZONE III - DeBaca, Guadalupe and Quay Counties

ZONE IV - Chaves County

ZONE V - Lincoln County

ZONE VI - Lee and Eddy Counties

ZONE VII - Otero Counties

ZONE VIII - Luna and Grant Counties, communities of Silver City, Bayard, Central, Hurley and new town site of Tyrone; Hidalgo and

Sierra Counties

ZONE IX - Dona Ana County

DECISION NO. NM78-4012

BUILDING AND HEAVY CONSTRUCTION CARPENTERS:	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Dwelling houses & apartments not to exceed two stories in height:					
Zone 1-A	7.50				.20
Zone 1-B	8.75	.95	1.00	.65	.20
Zone 1-C	9.50	.95	1.00	.65	.10
General Building, Heavy and Residential Construction (Dwelling houses and apart- ments over two stories in height):					
Zone 2-A	9.50	.95	1.00	.65	.20
Zone 2-B	10.75	.95	1.00	.65	.20
Zone 2-C	11.50	.95	1.00	.65	.20

CARPENTERS' ZONE DEFINITIONS

CARPENTERS (STATEWIDE) - From nearest basing points of the following cities
of Towns: Alamogordo, Albuquerque, Artesia, Bayard, Belen, Carlsbad, Clovis,
Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las
Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe,
Santa Rosa, Silver City, Socorro, Taos, and Tucumcari.

ZONE I - Dwelling houses & apartments not to exceed two stories in height:

Zone 1-A - 0 - 15 road miles from nearest basing point

Zone 1-B - 15 to 35 road miles from nearest basing point

Zone 1-C - Over 35 road miles from nearest basing point

ZONE II - General Building & Heavy Construction and Residential Construction
(Dwelling Houses and Apartments over two stories in height):

Zone 2-A - 0 - 15 road miles from nearest basing point

Zone 2-B - 15 to 35 road miles from nearest basing point

Zone 2-C - Over 35 road miles from nearest basing point

MILLWRIGHTS & PILEDRIVERMEN:

BUILDING AND HEAVY CONSTRUCTION CARPENTERS:	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Dwelling houses & apartments not to exceed two stories in height:					
Zone 1-A	7.50				.20
Zone 1-B	8.75	.95	1.00	.65	.20
Zone 1-C	9.50	.95	1.00	.65	.10
General Building, Heavy and Residential Construction (Dwelling houses and apart- ments over two stories in height):					
Zone 2-A	9.50	.95	1.00	.65	.20
Zone 2-B	10.75	.95	1.00	.65	.20
Zone 2-C	11.50	.95	1.00	.65	.20

DECISION NO. NM78-4012

MILLWRIGHTS & PILEDRIVERMEN ZONE DEFINITIONS

BASING POINT - FROM ALBUQUERQUE CITY LIMITS:
Zone 1 - 0 to 15 road miles from basing point
Zone 2 - 15 to 35 road miles from basing point
Zone 3 - Over 35 road miles from basing point

CEMENT MASONS:	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Dwelling houses & apartments not to exceed two stories in height:					
Zone 1-A	8.77	.57	.50		
Zone 1-B	8.77	.57	.50		
Zone 1-C	8.77	.57	.50		
Zone 2-A	9.02	.57	.50		
Zone 2-B	9.02	.57	.50		
Zone 2-C	9.02	.57	.50		
General Building, Heavy and Residential Construction (Dwelling houses and apart- ments over two stories in height):					
Zone 3-A	9.02	.57	.50		
Zone 3-B	9.02	.57	.50		
Zone 3-C	9.02	.57	.50		

CEMENT MASONS AREA DEFINITIONS

AREA I - Statewide except Farmington, San Juan County

AREA II - Farmington, San Juan County

Zone I - 0-15 miles from Farmington City Hall

Zone II - 15-35 miles from Farmington City Hall

Zone III - 35 miles and over from Farmington City Hall

CEMENT MASONS:	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Dwelling houses & apartments not to exceed two stories in height:					
Zone 1-A	10.90	.60	38+.70		1/8
Zone 1-B	11.66	.60	38+.70		1/8
Zone 1-C	12.32	.60	38+.70		1/8
Zone 2-A	13.08	.60	38+.70		1/8
Zone 2-B	13.08	.60	38+.70		1/8
Zone 2-C	13.08	.60	38+.70		1/8
Zone 3-A	13.08	.60	38+.70		1/8
Zone 3-B	13.08	.60	38+.70		1/8
Zone 3-C	13.08	.60	38+.70		1/8

ELECTRICIANS:

ZONE I

Area 1

1-A

1-B

1-C

1-D

Area 2

2-A

2-B

2-C

2-D

ZONE II

ELECTRICIANS-CABLE SPLICERS ZONE DEFINITIONS CONTD.

ZONE I CONTD:

AREAS 1-A & 2-A

From nearest basing point cities, towns and mileage from main post office in the following towns:

Albuquerque - 15 miles from main post office
 Santa Fe - 15 miles from main post office
 Las Vegas - 8 miles from main post office
 Farmington - 8 miles from main post office
 Raton - 6 miles from main post office
 Tucumari - 6 miles from main post office
 Aztec - 6 miles from main post office
 Roswell - 12 miles from main post office
 Ruidoso - 12 miles from main post office
 Portales - 12 miles from main post office
 Carrizozo - 12 miles from main post office
 Clovis - 12 miles from main post office
 Gallup - 10 miles from main post office

*Pojoaque - 2 miles from main post office

*All areas adjacent to Pojoaque that are over two (2) miles distant from the main post office in that town will be zoned out of Santa Fe.

AREAS 1-B & 2-B

Area 1-B and 2-B extending up to 20 miles beyond Area 1-A & 2-A

AREAS 1-C & 2-C

Area 1-C & 2-C extending up to 30 miles from Area 1-A & 2-A

AREAS 1-D & 2-D

Area 1-D & 2-D anything beyond 30 miles from Area 1-A & 2-A

ZONE II - Los Alamos County

Zone III - Dona Ana, Otero, Luna, Hidalgo Counties

Zone 3-A - Within 10 miles radius from the post office in Las Cruces and within a 5 mile radius from the post office in Alamogordo.

Zone 3-B - Dona Ana, Otero, Luna, and Hidalgo Counties (except that area specified in Zone 3-A)

ZONE IV - Eddy and Lea Counties - the following zones shall be designated from the main post office of Artesia, Carlsbad, Hobbs and Lovington:

Zone 4-A - 0 - 12 miles from main post office

Zone 4-B - 12 - 22 miles from main post office

Zone 4-C - 22 - 40 miles beyond main post office

Zone 4-D - 40 miles and beyond main post office

ZONE V - Single or multiple, family dwelling or apartments up to and including 26 units under one roof not exceeding two stories - Bernalillo, Santa Fe, Taos, Rio Arriba, Sandoval, Valencia and San Juan Counties, but not on the Navajo Indian Reservation

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
ELECTRICIANS CONTD:	9.10	.30	38			1/10%
	10.55	.30	38			1/10%
	10.15	.60	38			.01
CABLE SPLICERS:	10.50	.60	38			.01
	10.65	.60	38			.01
	10.90	.60	38			.01
CABLE SPLICERS:	5.80	.30	18			1/10%
	11.99	.60	38			1/10%
	12.75	.60	38			1/10%
CABLE SPLICERS:	13.41	.60	38			1/10%
	14.17	.60	38			1/10%
	11.99	.60	38			1/10%
CABLE SPLICERS:	12.75	.60	38			1/10%
	13.41	.60	38			1/10%
	14.17	.60	38			1/10%
CABLE SPLICERS:	9.35	.30	38			1/10%
	10.80	.30	38			1/10%
	10.50	.60	38			.01
CABLE SPLICERS:	10.85	.60	38			.01
	11.00	.60	38			.01
	11.25	.60	38			.01

ELECTRICIANS-CABLE SPLICERS ZONE DEFINITIONS

ZONE I

AREA 1 - Bernalillo, Santa Fe, Torrance, DeBaca, Guadalupe, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arriba, Grant, Sandoval, Valencia, Socorro, Catron, McKinley, Sierra and all of San Juan County excluding the Navajo Indian Reservation

AREA 2 - Chaves, Curry, Lincoln and Roosevelt Counties

IRONWORKERS ZONE DEFINITIONSZONE I

AREA I - Bernalillo, Catron, Colfax, DeBaca, Guadalupe, Lincoln, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, Santa Fe, Socorro, Taos, Torrance, and Valencia Counties

ZONE II

AREA II - Farmington, San Juan County

- Zone 1 - Shall extend a distance of 6 road miles inclusive beyond the City Hall.
- Zone 2 - Shall extend a distance of 8 road miles inclusive beyond the outer perimeter of zone 1.
- Zone 3 - Shall extend a distance of 10 road miles inclusive beyond the outer limits of zone 2.
- Zone 4 - Shall extend a distance of 27 road miles inclusive beyond the outer limits of zone 3.

All areas not within zones 1, 2, 3, and 4 shall revert to the \$15.00 per day subsistence rate.

ZONE III - Dona Ana, county with the exception of that portion of the county that lies within the White Sands Missile Range; Chaves County, Eddy County except that Potash Basin and defined as the area 10 road miles on Highway 62 and Highway 180, east of Carlsbad.

ZONE IIII - Curry, Harding, Quay, Union, Hidalgo, Grant, Lea, Luna, Otero and Sierra Counties; also Potash Basin, White Sands and McGregor Missile Ranges.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
<u>ELEVATOR CONSTRUCTORS:</u> Bernalillo, Catron, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union and Valencia Counties:					
Elevator constructors	10.96	.545	.35	48+a+b	.02
Elevator constructors helpers	70%JR	.545	.35	48+a+b	.02
Elevator constructors, prob.	50%JR				
Chaves, Hidalgo, Dona Ana, Eddy, Grant, Lea, Luna, Otero and Sierra Counties:					
Elevator constructors	8.57	.745	.35	48+a+b	.02
Elevator constructors helper	70%JR	.745	.35	48+a+b	.02
Elevator constructors prob.	50%JR				
<u>GLAZIERS:</u>					
Zone I	7.29	.30	.10		.02
Zone II	8.54	.35	.20		.02

GLAZIERS' ZONE DEFINITIONSGLAZIERS

ZONE I - Dona Ana, Luna, Otero Counties.

ZONE II - Statewide, except Dona Ana, Luna and Otero Counties

IRONWORKERS:

ZONE I - Area I

ZONE II - Area II

Zone 1

Zone 2

Zone 3

Zone 4

Zone II

Zone III

10.75	.55	1.00			.18
10.75	.55	1.00			.18
11.50	.55	1.00			.18
12.25	.55	1.00			.18
12.25	.55	1.00			.18
9.75	.55	1.00			.10
10.75	.55	1.00			.10

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
6.61	.53	.67		.05
6.91	.53	.67		.05
6.91	.53	.67		.05
7.21	.53	.67		.05
7.36	.53	.67		.05

LABORERS:BUILDING & HEAVY CONSTRUCTION

Group I

Group II

Group III

Group IV

Group V

LABORERS CLASSIFICATION DEFINITIONSGROUP I

Unskilled; Building and common laborers, carpenter tenders, concrete workers, chainmen-stakedrivers, concrete buggy operators

GROUP II

Semi-skilled; air and power tool operator, asphalt rakers, demolition, gunite, rebound men, fog machine operator, power buggy operators, rodmen, sand blasterers (pot men), window washers, wagon, core and diamond drillers tender outside, grade setter.

GROUP III

Wagon core, diamond drillers

GROUP IV

Concrete burner, cement mason tenders, hod carriers, mortar mixers, plaster spreader operators, plaster tenders, gunite nozzlemen, pipelayers, pumpcrete nozzlemen

GROUP V

Powdermen and blasterers

DECISION NO. NM78-4012

LABORERS RESIDENTIAL CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Group I	5.02	.53		.67		.05
Group II	5.32	.53		.67		.05
Group III	5.42	.53		.67		.05
Group IV	5.62	.53		.67		.05

RESIDENTIAL LABORERS' CLASSIFICATION DEFINITIONS

GROUP I
Unskilled - Building and common laborers, carpenter tenders, concrete workers, chainmen-stakedrivers, concrete buggy operators, hand

GROUP II
Semi-skilled - air and power tool operator, asphalt takers, demolition, gunnite rebound men, fog machine operator, power buggy operator, rodmen, sand blasters (pot men), window washers, wagon, core and diamond drillers tender outside

GROUP III
Wagon core, diamond drillers

GROUP IV
Concrete burner, cement mason tenders, hod carriers, mortar mixers, plaster spreader operators, plaster tenders, gunnite nozzlemen, pipelayer, pumpcrete nozzlemen

LABORERS: Zone I Zone II Zone III	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Zone I	9.605	.57				.02
Zone II	10.50					.01
Zone III	8.98					.01

LABORERS' ZONE DEFINITIONS

ZONE I - Catron, Grant, Bernalillo, Roosevelt, Union, Sandoval, San Juan, Socorro, Torrance and Valencia Counties.

ZONE II - Colfax, Los Alamos, Mora, Rio Arriba, San Miguel, Santa Fe and Taos Counties.

ZONE III - Dona Ana and Otero Counties

DECISION NO. NM78-4012

LINE CONSTRUCTION - AREA I	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
AREA I-A Lineman-Technician Cable splicers Equipment operator, includes helicopter operator, includes Equipment mechanic, includes helicopter mechanic & powderman Groundman & Jackhammer operators 1st 6 months 2nd 6 months Experienced	9.00 9.65 8.58 7.88 4.88 5.51 6.36	.60 .60 .60 .60 .60 .60 .60	38+.60 38+.60 38+.60 38+.60 38+.60 38+.60 38+.60			1/8 1/8 1/8 1/8 1/8 1/8 1/8
AREA I-B Lineman-Technician Cable splicers Equipment operator, includes helicopter operator, includes Equipment mechanic, includes helicopter mechanic & powderman Groundman & Jackhammer operators 1st 6 months 2nd 6 months Experienced	9.82 10.51 9.35 8.58 5.31 5.99 6.96	.60 .60 .60 .60 .60 .60 .60	38+.60 38+.60 38+.60 38+.60 38+.60 38+.60 38+.60			1/8 1/8 1/8 1/8 1/8 1/8 1/8
LINE CONSTRUCTION - AREA II						
AREA II Lineman Cable splicers Equipment operators (includes helicopter operator) Equipment mechanic (includes helicopter mechanic) & powderman Groundman & Jackhammer Operator: 1st 6 months 2nd 6 months Experienced	10.50 11.55 9.98 9.14 5.67 6.41 7.46	.60 .60 .60 .60 .60 .60 .60	38+.70 38+.70 38+.70 38+.70 38+.70 38+.70 38+.70			1/8 1/8 1/8 1/8 1/8 1/8 1/8
AREA II-B Lineman Cable splicers Equipment operators (includes helicopter operator) Equipment mechanic (includes helicopter mechanic) & powderman	11.24 12.29 10.72 9.14	.60 .60 .60 .60	38+.70 38+.70 38+.70 38+.70			1/8 1/8 1/8 1/8

DECISION NO. NM78-4012

LINE CONSTRUCTION AREA DEFINITIONS CONTD:

AREA II - Other line construction work including switching stations and sub-stations adjacent to power plants

Area II-A - From nearest basing point cities, towns and mileage from main post office in the following towns:

Albuquerque - 15 miles from main post office
 Santa Fe - 15 miles from main post office
 Las Vegas - 8 miles from main post office
 Farmington - 8 miles from main post office
 Raton - 6 miles from main post office
 Tucuman - 6 miles from main post office
 Atec - 6 miles from main post office
 Roswell - 12 miles from main post office
 Ruidoso - 12 miles from main post office
 Portales - 12 miles from main post office
 Carrizozo - 12 miles from main post office
 Clovis - 12 miles from main post office
 Gallup - 10 miles from main post office
 *Pojoaque - 2 miles from main post office

*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe.

Area II-B - Extending up to 20 miles beyond area II-A

Area II-C - Extending up to 30 miles from area II-A

Area II-D - Anything beyond 30 miles from area II-A

All work in Los Alamos County use Area II-C rates.

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
LINE CONSTRUCTION AREA II-B CONTD:					
Groundman & Jackhammer Operator					$\frac{1}{2}$
1st 6 months	6.41	.60	38+.70		$\frac{1}{2}$
2nd 6 months	7.15	.60	38+.70		$\frac{1}{2}$
Experienced	8.20	.60	38+.70		$\frac{1}{2}$
AREA II-C					
Lineman					$\frac{1}{2}$
Cable splicers	11.87	.60	38+.70		$\frac{1}{2}$
Equipment operator (includes helicopter operator)	12.92	.60	38+.70		$\frac{1}{2}$
Equipment mechanic (includes helicopter operator) & powderman	11.35	.60	38+.70		$\frac{1}{2}$
Groundman & Jackhammer operator:					$\frac{1}{2}$
1st 6 months	10.51	.60	38+.70		$\frac{1}{2}$
2nd 6 months	7.04	.60	38+.70		$\frac{1}{2}$
Experienced	7.78	.60	38+.70		$\frac{1}{2}$
AREA II-D					
Lineman					$\frac{1}{2}$
Cable splicers	12.60	.60	38+.70		$\frac{1}{2}$
Equipment operator (includes helicopter operator)	13.65	.60	38+.70		$\frac{1}{2}$
Equipment mechanic (includes helicopter mechanic) & powderman	11.35	.60	38+.70		$\frac{1}{2}$
Groundman and Jackhammer op.:					$\frac{1}{2}$
1st 6 months	11.24	.60	38+.70		$\frac{1}{2}$
2nd 6 months	7.77	.60	38+.70		$\frac{1}{2}$
Experienced	8.51	.60	38+.70		$\frac{1}{2}$
	9.56	.60	38+.70		$\frac{1}{2}$

LINE CONSTRUCTION AREA DEFINITIONS

AREA I - Line construction work for electric and telephone utilities, REA Co-ops, railroads and municipalities:

Area I-A - Bernalillo County

Area I-B - Statewide, except Bernalillo County

NOTICES

5983

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
MARBLE, TILE & TERRAZZO WORKERS	8.25	.67			
MARBLE, TILE & TERRAZZO FINISHERS	6.68	.67			
TERRAZZO MACHINE OPERATORS	6.93	.67			
PAINTER: ZONE I					
Zone 1-A	8.52	.35	.20		.05
Zone 1-B	9.02	.35	.20		.05
Zone 1-C	8.77	.35	.20		.05
Zone 1-D	9.10	.35	.20		.05
Zone 1-E	8.85	.35	.20		.05

PAINTERS' CONT'D:

PAINTERS (INDUSTRIAL WORK):
Brush, roller, sandblast and
grinder operators
Spray
Pot tender

ZONE III

Zone 3-A - 12¢ above scale
Zone 3-B - 25¢ above scale
Zone 3-C - 50¢ above scale
Zone 3-D - 75¢ above scale
Zone 3-E - \$1.00 above scale

PAINTERS: ZONE IV

Zone 4-A
Zone 4-B
Zone 4-C
Zone 4-D
Zone 4-E
Zone 4-F

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
9.82	.35	.20		.05
10.32	.35	.20		.05
8.82	.35	.20		.05
8.01	.30			.02
8.43	.30			.02
8.155	.30			.02
8.43	.30			.02
8.86	.30			.02
	.30			.02
	.30			.02
	.30			.02
	.30			.02
7.12	.35	.20		.05
7.62	.35	.20		.05
7.37	.35	.20		.05
7.22	.35	.20		.05
7.70	.35	.20		.05
7.45	.35	.20		.05

PAINTERS' ZONE AND CLASSIFICATION DEFINITIONS

PAINTERS:

ZONE I - San Juan, McKinley, Bernalillo, Torrance, Guadalupe, Quay, Catron, Socorro, Lincoln, DeBaca, Roosevelt, Chaves, Valencia, Sierra, Grant, Hidalgo, Curry, Lea and Eddy Counties, New Mexico.
Zone 1-A - Painters, roller and hand textures
Zone 1-B - Painters, spray, sandblasting, painter on steel bridges, tanks towers, pipe and structural
Zone 1-C - Paperhanger
Zone 1-D - Drywall finisher; ames tool operator
Zone 1-E - Hand finisher machine texture

ZONE II - Colfax, Hardin, Los Alamos, Mora, Sandoval, San Miguel, Rio Arriba, Taos, Union and Santa Fe Counties
Zone 2-A - Painters and roller
Zone 2-B - Paperhangers
Zone 2-C - Spray, sandblast, steel, special coating applicator
Zone 2-D - Vinyl hangers
Zone 2-E - Drywall finisher tool and machine texture
Zone 2-F - Hand texture
Zone 2-G - Hand finisher

PAINTERS' ZONE AND CLASSIFICATION DEFINITIONS CONT'D:

ZONE III - Luna, Otero and Dona Ana Counties

Zone 3-A - Brush, Tapers and rollers
Zone 3-B - Spray, sandblasting
Zone 3-C - Ames tool and steel brush after erection
Zone 3-D - Stripping machine
Zone 3-E - Radio towers, water tanks smoke stack
Zone 3-F - Radio towers, water tanks, smoke stacks 50 to 75 feet
Zone 3-G - Radio towers, water tanks, smoke stacks 75 to 100 feet
Zone 3-H - Radio towers, water tanks, smoke stacks 100 to 200 feet
Zone 3-I - Radio towers, water tanks, smoke stacks 200 to 300 ft.
Zone 3-J - Radio towers, water tanks, smoke stacks 300 to 400 ft.

ZONE IV - Residential Construction in Santa Fe, Sandoval, Rio Arriba & Taos Cos.

Zone 4-A - Brush and roller
Zone 4-B - Spray, parking lot stripping
Zone 4-C - Paperhangers
Zone 4-D - Vinyl hangers
Zone 4-E - Drywall finishers - ames tool op., machine texture
Zone 4-F - Drywall finishers - hand finisher

	Fringe Benefits Payments			Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	
PLASTERERS: Statewide, except Otero, Grant, Sierra, Dona Ana, Luna and Hidalgo Counties Otero, Grant, Sierra, Dona Ana, Luna and Hidalgo Counties PLUMBERS-PIPEFITTERS: Area I Area II Area III Specific Area Residential	8.00 8.31 11.20 11.70 12.95 11.83 6.50	.48 .67 .63 .63 .63 .63 .63	.30 1.42 1.42 1.42 1.42 .25	.01 .01 .16 .16 .16 .16 .16

PLUMBERS - PIPEFITTERS' ZONES DEFINITIONS

BASING POINT CITIES OR TOWNS:

Albuquerque, Alamogordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucumcari, Truth of Consequence and Socorro, New Mexico.

Area I - Shall include a distance of seven road miles inclusive beyond the city or town limits.

Area II - Shall extend a distance of four road miles inclusive beyond the outer perimeter of area I.

Area III - Shall apply to all areas not within areas I or 2, or not within the specific area.

Specific Area - Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds, Atlas Missile Complex Sites in Chaves and Lincoln Counties, and the Oro Grande Range Camp and Dona Ana and Otero Counties.

POWER EQUIPMENT OPERATORS AREA DEFINITIONS:

AREA I - Farmington, San Juan County
 Zone I - 0 - 15 miles from Farmington City Hall
 Zone II - 15-35 miles from Farmington City Hall
 Zone III - 35-50 miles from Farmington City Hall
 AREA II - Statewide, except San Juan County

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
Group 1	.60	.60		.11
Group 2	.60	.60		.11
Group 3	.60	.60		.11
Group 4	.60	.60		.11
Group 5	.60	.60		.11
Group 6	.60	.60		.11
Group 7	.60	.60		.11
Group 8	.60	.60		.11
Group 9	.60	.60		.11
Group 10	.60	.60		.11
Group 11	.60	.60		.11
Group 12	.60	.60		.11
Group 13	.60	.60		.11
Group 14	.60	.60		.11
Group 15	.60	.60		.11
Group 16	.60	.60		.11
Group 17	.60	.60		.11
Group 18	.60	.60		.11
Group 19	.60	.60		.11
Group 20	.60	.60		.11
Group 21	.60	.60		.11
Group 22	.60	.60		.11
Group 23	.60	.60		.11
Group 24	.60	.60		.11
Group 25	.60	.60		.11
Group 26	.60	.60		.11
Group 27	.60	.60		.11
Group 28	.60	.60		.11
Group 29	.60	.60		.11
Group 30	.60	.60		.11
Group 31	.60	.60		.11
Group 32	.60	.60		.11
Group 33	.60	.60		.11
Group 34	.60	.60		.11
Group 35	.60	.60		.11
Group 36	.60	.60		.11
Group 37	.60	.60		.11
Group 38	.60	.60		.11
Group 39	.60	.60		.11
Group 40	.60	.60		.11
Group 41	.60	.60		.11
Group 42	.60	.60		.11
Group 43	.60	.60		.11
Group 44	.60	.60		.11
Group 45	.60	.60		.11
Group 46	.60	.60		.11
Group 47	.60	.60		.11
Group 48	.60	.60		.11
Group 49	.60	.60		.11
Group 50	.60	.60		.11
Group 51	.60	.60		.11
Group 52	.60	.60		.11
Group 53	.60	.60		.11
Group 54	.60	.60		.11
Group 55	.60	.60		.11
Group 56	.60	.60		.11
Group 57	.60	.60		.11
Group 58	.60	.60		.11
Group 59	.60	.60		.11
Group 60	.60	.60		.11
Group 61	.60	.60		.11
Group 62	.60	.60		.11
Group 63	.60	.60		.11
Group 64	.60	.60		.11
Group 65	.60	.60		.11
Group 66	.60	.60		.11
Group 67	.60	.60		.11
Group 68	.60	.60		.11
Group 69	.60	.60		.11
Group 70	.60	.60		.11
Group 71	.60	.60		.11
Group 72	.60	.60		.11
Group 73	.60	.60		.11
Group 74	.60	.60		.11
Group 75	.60	.60		.11
Group 76	.60	.60		.11
Group 77	.60	.60		.11
Group 78	.60	.60		.11
Group 79	.60	.60		.11
Group 80	.60	.60		.11
Group 81	.60	.60		.11
Group 82	.60	.60		.11
Group 83	.60	.60		.11
Group 84	.60	.60		.11
Group 85	.60	.60		.11
Group 86	.60	.60		.11
Group 87	.60	.60		.11
Group 88	.60	.60		.11
Group 89	.60	.60		.11
Group 90	.60	.60		.11
Group 91	.60	.60		.11
Group 92	.60	.60		.11
Group 93	.60	.60		.11
Group 94	.60	.60		.11
Group 95	.60	.60		.11
Group 96	.60	.60		.11
Group 97	.60	.60		.11
Group 98	.60	.60		.11
Group 99	.60	.60		.11
Group 100	.60	.60		.11

BUILDING & HEAVY CONSTRUCTION
 AREA I (RESIDENTIAL & BUILDING CONSTRUCTION)

ZONE I

Group 1

Group 2

Group 3

Group 4

Group 5

Group 6

Group 7

Group 8

Group 9

Group 10

Group 11

Group 12

Group 13

Group 14

Group 15

Group 16

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Group 50

Group 51

Group 52

Group 53

Group 54

Group 55

Group 56

Group 57

Group 58

Group 59

Group 60

Group 61

Group 62

Group 63

HEAVY CONSTRUCTION (POWER EQUIPMENT OPERATORS AREA DEFINITIONS)

AREA I - Statewide, except San Juan County
 Basing points for zone pay shall be determined from the Center of the following cities - Albuquerque, Carlsbad, Gallup, Raton and Las Cruces.

Zone I - 0 to 50 miles
 Zone II - Over 50 miles

AREA II - Farmington, San Juan County

Zone I - 0 to 15 miles from Farmington City Hall

Zone II - 15 to 35 miles from Farmington City Hall

Zone III - Over 35 miles from Farmington City Hall

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
7.93	.60	.60		.11
8.93	.60	.60		.11
8.47	.60	.60		.11
9.47	.60	.60		.11
8.55	.60	.60		.11
9.55	.60	.60		.11
8.61	.60	.60		.11
9.61	.60	.60		.11
8.67	.60	.60		.11
9.67	.60	.60		.11
8.77	.60	.60		.11
9.77	.60	.60		.11
8.87	.60	.60		.11
9.87	.60	.60		.11
9.05	.60	.60		.11
10.05	.60	.60		.11
9.85	.60	.60		.11
10.85	.60	.60		.11

HEAVY CONSTRUCTION (AREA I):

GROUP I

Zone 1

Zone 2

Zone 3

Zone 4

Zone 5

Zone 6

Zone 7

Zone 8

Zone 9

Zone 10

Zone 11

Zone 12

Zone 13

Zone 14

Zone 15

Zone 16

Zone 17

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Zone 111

Zone 112

Zone 113

Zone 114

Zone 115

Zone 116

Zone 117

Zone 118

Zone

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (BUILDING & RESIDENTIAL)

GROUP I - Fireman, oiler, screedman, scale operator such as (Bin-a-batch), rubber tired farm type tractor, tractors under 50 hp w/o attachments, breakman, concrete paving curing machine (bridge-type), helpers; mechanic, welder grease truck

GROUP II - Roller, sheepfoot or pneumatic self propelled w/o dozer, concrete conveyor, service truck operator (head oiler), air compressor (300 CFM and over), pumps (6" and over), screening plants, concrete mixers (under 1 CY), concrete saw or grinder-span type, 1 drum hoists, air tugger, elevating belt type loaders, forklift, lumber stacker, tractor-farm type (under 50 hp w/o attachments), motorman and industrial locomotive operator, winch trucks, front end loader (under 2 CY), power plants which generate over 15 KW, welding machines

GROUP III - Bituminous distributors, boilers, retort and hot oil heaters, concrete mixers (1 CY and over), concrete paver-single drum, drilling equipment, motor graders (rough), shaft and tunnel equipment; (refrigeration, slusher, jumbo form), trenching machines (all types), pumpcrete and gunite machines, slipform paver, mechanical bullfloats, concrete slab spreading machine, concrete slab finishing machines, crushing plants.

GROUP IV - Front end loader (2 thru 10 CY), rollers, steel wheeled-all types, bulldozers, scrapers, (motor or towed), elevating graders, concrete batching plants, self propelled rollers equipped with dozer. Twin bowl scrapers and quad 8 or 9 pushers (35¢ over basic rate). Three bowl scrapers (60¢ over basic rate). Tractor (farm type w/hydraulic backhoes).

GROUP V - Hydraulic cranes with less than 50 feet of boom (20 tons and under). Concrete paver double drum. 2 drum hoist, auto fine grader, cat cranes, hysters, side and swingboom cats.

GROUP VI - Mucking machines, all types; motor grader, finish; mechanic, welder

GROUP VII - Steam engineers/loader (front end over 10 CY); concrete pump (snorkel type)

GROUP VIII - All shovel type equipment; cranes, draglines, backhoes, derricks, guy and stiff leg; pipemobile (No. 2 op.), pile driver, hydraulic cranes (20 tons and over), mine hoist, belt loader ("C.M.I." type), cranes & draglines, with booms and jib over 150 feet - 25¢ per hour additional.

GROUP IX - Shovel (wheel type), boring machine (tunnel or shaft mole), pipemobile

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
<u>HEAVY CONSTRUCTION</u>					
<u>POWER EQUIPMENT OPERATORS</u>					
<u>HEAVY CONSTRUCTION (AREAL)</u>					
<u>GROUP I</u>					
Zone 1	7.93	.60	.60		.11
Zone 2	8.68	.60	.60		.11
Zone 3	8.93	.60	.60		.11
<u>GROUP II</u>					
Zone 1	8.47	.60	.60		.11
Zone 2	9.22	.60	.60		.11
Zone 3	9.47	.60	.60		.11
<u>GROUP III</u>					
Zone 1	8.55	.60	.60		.11
Zone 2	9.30	.60	.60		.11
Zone 3	9.55	.60	.60		.11
<u>GROUP VI</u>					
Zone 1	8.61	.60	.60		.11
Zone 2	9.36	.60	.60		.11
Zone 3	9.61	.60	.60		.11
<u>GROUP V</u>					
Zone 1	8.67	.60	.60		.11
Zone 2	9.42	.60	.60		.11
Zone 3	9.67	.60	.60		.11
<u>GROUP VII</u>					
Zone 1	8.77	.60	.60		.11
Zone 2	9.52	.60	.60		.11
Zone 3	9.77	.60	.60		.11
<u>GROUP VIII</u>					
Zone 1	8.87	.60	.60		.11
Zone 2	9.62	.60	.60		.11
Zone 3	9.87	.60	.60		.11
<u>GROUP IX</u>					
Zone 1	9.05	.60	.60		.11
Zone 2	9.80	.60	.60		.11
Zone 3	10.00	.60	.60		.11
<u>GROUP IX</u>					
Zone 1	9.85	.60	.60		.11
Zone 2	10.60	.60	.60		.11
Zone 3	10.85	.60	.60		.11

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (HEAVY CONSTRUCTION)

GROUP I - Fireman, oiler, screedman, scale operator such as (bin-a-batch), rubber tired farm type tractor, tractors under 50 HP w/o attachments, breakman, concrete paving curing machine (bridge-type), helpers; (mechanic, welder), grease truck

GROUP II - Rollers, sheepsfoot or pneumatic self propelled w/o dozer, concrete conveyor, service truck operator (head oiler), air compressor (300 CFM and over), pumps (6" and over), screening plants, concrete mixers (under 1 CY), concrete saw or grinder-span type, 1 drum hoist, air tugger, elevating belt type loaders, forklift, lumber stacker, tractor-farm type (under 50 HP w/attachment), motor man and industrial locomotive operator, winch truck front end loader (under 2 CY), power plants which generate over 15 KW, welding machines

GROUP III - Bituminous distributors, boilers, retort and hot oil heaters, concrete mixers (1 CY and over), concrete paver-single drum, drilling equipment, motor graders (rough), shaft and tunnel equipment, refrigeration, slusher, jumbo forms, trenching machines (all types), pumpcrete and gunite machines, slipform paver, mechanical bullfloats, concrete slab spreading machine, concrete slab finishing machine, asphalt plants, bituminous finishing machines, crushing plants

GROUP IV - Front end loader (2 thru 7 CY), rollers steel wheel (all types), bulldozers, scrapers, (motor or towed), elevating graders, concrete batching plants, self-propelled rollers, equipped with dozer, twin-bowl scrapers and quad 8 or 9 pushers (35¢ over basic rate), three bowl scrapers (60¢ over basic rate)

GROUP V - Front end loader (over 7 CY thru 10 CY), hydraulic cranes, with less than 50 feet of boom (20 tons and under), concrete paver, double drum, cat cranes, hysters, side and swingboom cats, 2 drum hoist, auto fine grader

GROUP VI - Mucking machines, all types, motor grader (finish), mechanic, welder

GROUP VII - Steam engines, loader (front end over 10 CY)

GROUP VIII - All shovel type equipment; cranes, draglines, backhoes, derricks, guy and stiff leg, pipemobile (No. 2 operator), piledriver, hydraulic cranes (20 tons and over), mine hoist, belt loader ("C.M.I." Type)

GROUP IX - Shovel (wheel type), boring machine (tunnel or shaft mole), pipemobile

	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Vacation
ROOFERS	8.00	.25		
SHEET METAL WORKERS:				
Zone 1	10.87	.53	1.00	.12
Zone 2	9.62	38+.51	.385	.04
Zone 3	8.35	.20		.05
Zone 4	11.87	.53	1.00	.12

SHEET METAL WORKERS ZONE DEFINITIONS

Zone 1 - Bernalillo, Catron, Chaves, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Miguel, Santa Fe, Socorro, Union, Taos, Torrance, Valencia, San Juan Counties, Kirtland Air Force Base.

Zone 2 - Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Siera and Otero Counties

Zone 3 - Holloman Air Force Base, White Sands and McGregor Ranges

Zone 4 - Los Alamos County

	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Vacation
SPRINKLER FITTERS	11.26	.65	.95	
SOFT FLOOR LAYERS:				
Zone 1	8.28	.30	.10	.02
Zone 2	8.25	.35	.40	.02

SOFT FLOOR LAYERS' ZONE DEFINITIONS

Zone 1 - Dona Ana, Luna and Otero Counties

Zone 2 - Statewide (excluding Dona Ana, Luna and Otero Counties)

	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Vacation
SOUND INSTALLERS:				
SOUNDMAN				
Zone 1	10.10	.60	3%	
Zone 2	11.36	.60	3%	
Zone 3	13.89	.60	3%	
TECHNICIANS				
Zone 1	8.08	.60	3%	
Zone 2	9.34	.60	3%	
Zone 3	11.87	.60	3%	
SOUND INSTALLERS				
Zone 1	6.57	.60	3%	
Zone 2	7.83	.60	3%	
Zone 3	10.36	.60	3%	

SOUND INSTALLERS ZONE DEFINITIONS

Zone I - Thirty mile radius of main post office of Albuquerque

Zone II - Remainder of Valencia, Sandoval, Santa Fe, Torrance, and Socorro Counties, the hourly rates of pay shall be increased to twelve and one-half (12½) percent of journeyman rate of pay for Zone I.

Zone III - Chavez, Curry, Roosevelt, Lincoln, Guadalupe, DeBaca, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arriba, Catron, Sierra, Grant, Los Alamos, San Juan, McKinley Counties, the hourly rates of pay shall be increased by thirty-seven and one-half (37.5) percent of the journeyman rate of pay for Zone I.

DECISION NO. NM78-4012

DECISION NO. NM78-4012

TRUCK DRIVERS CLASSIFICATIONS CONTD.

GROUP IV - Distributor driver; heavy tire repairman; lumber carrier driver; young buggy or similar equipment, transit mix or agitator 2 or 3 axle bobtail equipment; scissor truck; bulk cement bobtail 2 or 3 axles; semi-trailer driver (flat-bed or van single axle); forklifts 5 ton and over MRC; field equipment servicer

GROUP V - Dumpster and dumpcrete driver; water, fuel or oil truck, 3,000 to 6,000 gal; lowboys and light equipment driver; euclid type tank wagon under 6,000 gal.

GROUP VI - Vacuum truck; dump trucks (including all highway and off-highway 16 up to 22 C.Y.W.L.C.

GROUP VII - Transit mix or agitator semi or 4 axle equipment driver; flashy truck type spreader box driver; slurry truck driver; bulk cement driver; semi-doubles; 4 axle bobtail; winch truck and "A" frame; dump truck (including all highway and off-highway) 22 CY up to 35 C.Y.W.L.C.; head field equipment servicer.

GROUP VIII - Euclid diesel power turnarocker; terra cotta-DW20-LeTourneau Pulls and similar diesel powered equipment when used to haul materials and assigned to a teamster--lowboy heavy equipment driver; water, fuel or oil trucks 6,000 gal. and over including tank wagon drivers, semi-trailer driver (flat-bed or van tandems); light equipment mechanic; dump trucks (including all highway and off-highway) 35 C.Y.W.L.C. and over; truck and trailer or semi-trailer (flatbed); eject all

GROUP IX - Warehousemen including material checker; cardex man; lobby (heavy equipment double gooseneck); heavy equipment mechanic; welder (body and fender men)

TEAMSTERS classifications not listed shall be paid a rate comparable to classifications listed.

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
LEAD BURNERS					
AREA I	11.70	.63	1.42		.16
AREA II	12.20	.63	1.42		.16
AREA III	13.45	.63	1.42		.16
AREA IV	12.33	.63	1.42		.16

LEAD BURNERS BASING POINT & AREA DEFINITIONS

BASING POINT CITIES OR TOWNS:

Albuquerque, Alamogordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lovington, Portales, Raton, Socorro, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucumcari and Truth or Consequence.

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
GENERAL BUILDING CONSTRUCTION					
TRUCK DRIVERS:					
Group 1	6.91	.57	.50		
Group 2	7.03	.57	.50		
Group 3	7.11	.57	.50		
Group 4	7.23	.57	.50		
Group 5	7.28	.57	.50		
Group 6	7.38	.57	.50		
Group 7	7.48	.57	.50		
Group 8	7.62	.57	.50		
Group 9	7.77	.57	.50		
TRUCK DRIVERS (RESIDENTIAL CONST.)					
Group 1	6.61	.57	.50		
Group 2	6.73	.57	.50		
Group 3	6.81	.57	.50		
Group 4	6.93	.57	.50		
Group 5	6.98	.57	.50		
Group 6	7.08	.57	.50		
Group 7	7.18	.57	.50		
Group 8	7.32	.57	.50		
Group 9	7.47	.57	.50		
TRUCK DRIVERS (HEAVY CONST.)					
Group 1	7.11	.57	.50		
Group 2	7.23	.57	.50		
Group 3	7.31	.57	.50		
Group 4	7.43	.57	.50		
Group 5	7.48	.57	.50		
Group 6	7.58	.57	.50		
Group 7	7.68	.57	.50		
Group 8	7.82	.57	.50		
Group 9	7.97	.57	.50		

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING, RESIDENTIAL AND HEAVY CONSTRUCTION).

GROUP I - Pickup 3/4 ton and under, service station, including lubrication, light tire repair and washer, swamper or riding helper, 2 or up

GROUP II - Bus or taxi driver, dump or batch truck under 8 C.W.L.C.; flat bed (bobtail) 2 ton and under; mechanic and welder helper; fork lift under 5 tons MRC.

GROUP III - Dump trucks (including all highway and off highway) 8 up to 16 C.Y.W.L.C.; water, fuel or oil trucks less than 3,000 gal., flat bed (bobtail) over 2 tons

LEAD BURNERS BASING POINT & AREA DEFINITIONS (CONT'D)

AREA I - Shall include a distance of seven road miles inclusive beyond the city or town limits.

AREA II - Shall extend a distance of 4 road miles inclusive beyond the outer perimeter of area I.

AREA III - Shall apply to all areas not within 1 or 2, or not within the specific areas.

AREA IV (SPECIFIC AREA) - Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range, and/or Proving Grounds.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a - Includes \$0.07 contribution to the Occupational Health Fund

b - 1st 6 months - none; 6 months to 5 years, 6¢; over 5 years, 8¢; of basic hourly rate.

c - Paid Holidays; A through F

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;

E-Thanksgiving Day; F-Christmas Day.

SUPERSEDES DECISION

STATE: Ohio

DECISION NO. OH78-2002

COUNTIES: MAHONING & TRUMBULL

DATE: Date of Publication

Supersedes Decision No. OH77-2076, dated May 13, 1977 in 42 FR 24644.

DESCRIPTION OF WORK: Building and Residential Construction

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$10.74	.45	.70		.02
BOILERMAKERS	12.23	.60	1.10		.03
BRICKLAYERS:					
Mahoning Co. (Smith Twp.)	10.79	.85	.60		.01
Mahoning Co. (Rem. of co.)	11.54	.60	.60		.02
Trumbull Co.	11.84	.40	.50		.02
CARPENTERS:					
Commercial Building	10.34	1.07	1.00		.04
Residential	9.31	1.07	1.00		.04
CEMENT MASONS:					
Mahoning & Trumbull (Twps. of Hubbard & Liberty) Cos.	10.57	.50	.50		.05
Trumbull (Rem. of Co.) Co.	11.12	.40			.05
ELECTRICIANS:					
Mahoning (Milton twp.) & Trumbull (Excluding Hubbard & Liberty Twps.) Cos.	12.59	.60	7¢		.7¢
Mahoning (Austintown, Beaver, Berlin, Broadman, Canfield, Ellsworth, Coitsville, Goshen, Green, Jackson, Poland, Springfield, & Youngstown twps.) & Trumbull (Hubbard & Liberty Twps.) Cos.	12.55	.56	7¢		.3¢
Mahoning (Smith twp.) Co.:					
Commercial Building	11.90	.40	3¢+.40		.3¢
Residential (4 units only)	8.05	.40	3¢+.20		.3¢
ELEVATOR CONSTRUCTORS:					
Elevator constructors	11.75	.745	.56	4¢+a+b	.035
Helpers	70¢JR	.745	.56	4¢+a+b	.035
50¢JR					
GLAZIERS	10.37	.40	.20		
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	11.76	.40	1.15		.07
Sheeters	12.26	.40	1.15		.07
Bucker-up	11.885	.40	1.15		.07

DECISION NO. OH78-2002

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
LABORERS: Building & Construction Jackhammer op. (all machine driven tools, electric, gas or air & gas buggies) Mortar mixers (hand or machine) Trenching & shaft excavations (7' or more) Jackhammer op. in trench & shaft excavation (7' or more) Power & dynamite & sewer pipe layers Scrap iron burning Gunnite scaffold man (over 25') Gunnite nozzlemen; Gunnite gunman Plasterers hod carriers LEADBURNERS LINE CONSTRUCTION: Mahoning (excluding Smith Twp.) & Trumbull Cos.; Linemen: Cable Splicer; Operator - pole digging equipment Mahoning Co. (Smith Twp.); Linemen; Cable Splicer Line equipment oprs. MARBLE SETTERS' FINISHERS; Terrazzo workers' finishers; & Tile setters' finishers Mahoning (excluding Smith Twp.) MILLWRIGHTS; Piledrivermen	8.95 9.08 9.07 9.13 9.07 9.27 9.05 9.35 9.53 9.13 10.75 13.23 11.90 10.60 11.455 11.13	.55 .55 .55 .55 .55 .55 .55 .55 .55 .55 .40 .45 .40 .40 1.07	.40 .40 .40 .40 .40 .40 .40 .40 .40 .40 c 3% 38+.40 38+.40 1.00		.05 .05 .05 .05 .05 .05 .05 .05 .05 .05 .01 1/8 1/8 1/8 .04

DECISION NO. OH78-2002

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
PAINTERS: Brush; dipping; Hydro jet cleaning; Paperhangers; Roller; Steamcleaning; wall washing; & Waterproofing Spray; Epoxy-mastic (Brush & Roller) Dry wall taping Open Structural steel PLASTERERS: Mahoning Co. Commercial Residential Trumbull Co. Commercial Residential PLUMBERS; Steamfitters: Mahoning & Trumbull (Hubbard & Liberty Twp.s.) Cos. Trumbull Co. ROOFERS SHEET METAL WORKERS SOFT FLOOR LAYERS: Commercial Building Residential SPRINKLER FITTERS TERRAZZO WORKERS' FINISHERS; & Tile setters' finishers: Mahoning Co. (Smith Twp.)	11.10 11.60 11.25 11.31 11.61 8.71 11.24 8.43 12.31 10.75 11.21 11.84 9.80 8.82 12.30 8.09	.60 .60 .60 .60 .60 .60 .60 .60 .75 .57 .60 .75 1.07 1.07 .65 .70	.80 .80 .80 .80 .80 .80 .79 1.00 1.00 .95 .45		.03 .03 .03 .03 .03 .01 .01 .04 .04 .04 .08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

- Seven paid holidays: A through F, & Day after Thanksgiving
- Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years, and 6% for employee in business less than 5 years.
- Nine paid holidays: A through F, Washington's Birthday; Good Friday; & Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.

DECISION NO. 0878-2002
POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CLASS I	\$12.01	.65	.80			.14
CLASS II	11.32	.65	.80			.14
CLASS III	10.68	.65	.80			.14
CLASS IV	10.27	.65	.80			.14
CLASS V	10.17	.65	.80			.14
CLASS VI	12.28	.65	.80			.14

CLASS I - Asphalt planer heater; Austin western & similar type; Backhoe; Batch plant-central mix; Batch plant-portable concrete; Berm builder-automatic; Backfiller w/drag attachment; Boat derrick; Boat-tug; Boring mach. attached to tractor; Bulldozer; Bulldozer; C.M.I. road builder & similar types; Cable placer & layer; Carrier-straddle; Carryall - scraper or scoop; Chicago boom; Compactor w/blade attached; Concrete spreader finisher comb.; Crane; Crane-stationary or climbing; Crane-electric overhead; Crane-side boom; Crane truck; Crane-tower; Derrick-boom; Derrick-car; Biggers-wheel (not trencher or road widener); Double nine; Drag line; Dredge; drill-kenny or similar type; Electromatic; Fork lift; Frankie pile; Gradall; Grader-power; Gurdy; Gurry-self-propelled; High lift; Hoist-monorail; Hoist-stationary & mobile tractor; Hoist-2 or 3; Jackall; Jumbo mach.; Kocal or Kuhlman; land-seagoing vehicle; Loader - Elevating; Loader-front end; Locomotive; Mechanic as welder; Metro clip harvester w/boom; Mucking mach.; Paver-asphalt finishing mach.; Paver-road concrete; Paver-slip form; Place crete machine; Post driver; Power driven hydraulic pumps & jacks; pump crete machine; Regulator-ballast; Reigs-drilling; Shovels; Spikemaster; Stonecrusher; Tie puller & loader; tie tamper; Tractor-double boom; tractor w/attachments; Trucks-boom; Truck-tire-assigned to job; Trench mach.; Tunnel machine (Mark 21 Java or similar); Whiley

CLASS II - Asphalt plant; Bending machine; Boring mach.; Chip harvester w/o boom; cleaning mach.- pipeline type; Coating Mach-pipeline type; Concrete belt placer; concrete finisher; Concrete planer or asphalt; Concrete spreader; Elevator; Fork lift walk behind; form line mach.; Grease truck op.; Grout pump; Gunnite mach.; Huck bolting Mach.; Hydraulic scaffold; Paving breaker; Pipe dream; pot firemen; Power broom; Refrigeration plant; Sasgen derrick; Seeding Mach.; Self-propelled mobile vibrator compactor or roller; Hoist-cingle drum; Soil stabilizer (pump type); Spray cure Mach.-Self propelled; Straw blower mach.; Sub-grader; Tube Finisher or broom C.M.I. or similar type; Tugger Hoist

DECISION NO. 0878-2002

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III - Batch plant-job related; Boiler op.; Compressor (125 CFM or over); Curb builder (self-propelled); Generator-steam; Jack-hydraulic driven; Mixer-concrete; Mulching Mach.; Pin puller; Pulverizer; Pump; Road finishing mach. (pulltype); roller; Saw-concrete-self propelled; signal man; spray cure mach.-motor powered; Spreader (side driver shoulder attachment); Tractor; Trencher-form; Water Blaster

CLASS IV - Brake man; Compressor under 125 CFM; Conveyor; Conveyor 12 feet or under other than servicing bricklayers; Deck hand; Drill wagon; fireman; Generator sets; Heaters-portable power (2 to 5); Helper-mechanic; Jacks Hydraulic (railroad); Ladavator; Roller (walk behind 1 ton or over); Steam jenny; Syphons; Vibrator-gasoline; Welding machines (2) (fuel burning)

CLASS V - Oiler
CLASS VI - Rigs-pile driving or caisson type

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
TRUCK DRIVERS: Dump; Flat bottom; Stake body; Batch; Water wagons; & pickups Semis; Tandems; Mixers; Semi-water wagons; Fuel trucks; & Distributor trucks Euclid wagon; DW 10 caterpillars or equipment; Carry-all Tractor trailer (low boy)	\$9.435 9.655 9.905 10.005	.40 .40 .40 .40	\$22.00a 22.00a 22.00a 22.00a			

FOOTNOTE:

a. per week per employee

SUPERSEDES DECISION

STATE: Ohio
 COUNTY: Fulton & Lucas
 DATE: Date of Publication
 Decision No.: OH78-2003
 Supersedes Decision No. OH77-2073, dated May 13, 1977 in 42 FR 24642.
 DESCRIPTION OF WORK: Building and Residential Construction

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Fr.
	H & W	Pensions	Vacation		
\$12.43	.50	1.20			.04
13.10	.70	1.00			.03
12.155	.93	.90			.01
11.72	.93				
9.38	.93				
12.32	.93	.75			.05
13.34	.60				.02
13.00	.65	38+.55			.18
7.15	.65	38+.55			.18
12.355	.745	.56	48+a+b		.035
70&JR	.745	.56	48+a+b		.035
50&JR	.50	.85			.01
10.525	.93	1.11			.05
12.30	.93	.10			.01
12.38	.50				
13.11	.50	38	C		48
13.36	.50	38	C		48
10.49	.65	.70			
11.04	.65	.70			
11.04	.65	.70			
13.00	.60				.01
12.83	.80	.85			.09
12.11	.93	.85			.02
12.195	.93	1.15			.045
10.90	.93	.50			.04
10.30	.93	.50			.04
12.30	.65	.95			.08
11.81	.93	.50			
10.10	.65	.40	.50		

ASBESTOS WORKERS
 BOILERMAKERS
 BRICKLAYERS; Marble setters; & Stonemasons:
 Fulton (Twp. of Amboy, Swan Creek & Fulton); & Lucas Cos.
 Fulton Co. (Remainder of Co.):
 Commercial
 Residential
 CARPENTERS; Millwrights; & Fildriversmen
 CEMENT MASONS
 ELECTRICIANS:
 Commercial
 Residential
 ELEVATOR CONSTRUCTORS:
 Elevator Constructors
 Helpers
 GLAZIERS
 IRONWORKERS
 LATHES
 LINE CONSTRUCTION:
 Linemen
 Cable Splicers
 PAINTERS:
 Brush; drywall tapers; Paper-hangers
 Bridge; Railings; Powerhouse; Refinery tanks
 Sandblasting; spray; Pressure Cleaning
 PLASTERERS
 PLUMBERS; Steamfitters; Pipe-fitters
 ROOFERS
 SHEET METAL WORKERS
 SOFT FLOOR LAYERS:
 Commercial
 Residential
 SPRINKLER FITTERS
 TERRAZZO WORKERS; Tile setters
 THERAZZO WORKERS' FINISHERS; & Tile setters' finishers

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;
 E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

- a. Seven paid holidays: A through F, & Day after Thanksgiving
 b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
 c. Ten paid holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve.

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Fr.
	H & W	Pensions	Vacation	
8.52	.55	.40		
8.64	.55	.40		
8.665	.55	.40		
8.695	.55	.40		
9.17	.55	.40		
8.755	.55	.40		
10.61	.55	.40		.01
10.74	.55	.40		.01
10.81	.55	.40		.01
10.765	.55	.40		.01
10.865	.55	.40		.01
11.52	.55	.40		.01

LABORERS:
 Fulton County:
 Unskilled laborers
 Mason tenders; Gunite pot men
 All power driven tools & buggies; burners; Torchmen;
 Nozzleman for concrete pump
 Plasterers' tenders
 Nozzle operators for gunite work
 Bellmen; Bottom men; Brick expeditor
 Lucas County:
 Unskilled laborers
 Mason Tenders
 Gunite pot men; Mortar mixers
 Concrete pump nozzle men; All power driven tools; Power buggies
 Pipe layers; Bellmen; Bottom men for fire brick work only
 Nozzle operators for gunite work

STATE: OHIO
 COUNTY: *SEE BELOW
 DATE: Date of Publication
 DECISION NUMBER: OH78-2080, dated May 13, 1977 in 42 FR 24655
 SUPERSEDES DECISION NO. OH77-2080, dated May 13, 1977 in 42 FR 24655
 DESCRIPTION OF WORK: Building & Residential Construction

*ASHTABULA, CUYAHOGA, LAKE, LORAIN, PORTAGE, STARK, & SUMMIT

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	12.09	.61	1.00		.11
GROUP B	11.93	.61	1.00		.11
GROUP C	11.58	.61	1.00		.11
GROUP D	10.77	.61	1.00		.11
GROUP E	10.44	.61	1.00		.11
GROUP F	8.73	.61	1.00		.11

GROUP A - A-frames; rotary drills used on caisson work for foundations and sub-structure work; boiler or compressor operator mounted on crane (piggyback operation); boom truck (all types); cableways; cherry pickers; combination concrete mixer and tower; concrete pumps; cranes (all types); derrick (all types); draglines; dredge (dipper, clam or suction) 3 man crew; elevating grader or euclid loader; floating equipment; gradalls, helicopter operator and helicopter winch operator when hoisting builders materials; hoes (all types); hoisting engines (two or more drums); lift slab or panel jack operator; locomotives (all types); maintenance engineer (mechanic or welder); mixers paving (multiple drum); mobile concrete pumps with booms; pumpboard (all types on site); pile driver; power shovels; side booms; slip form pavers; straddle carriers (building construction on site); hammerhead tower cranes; trench machines (over 24" wide); tug boat.

GROUP B - Asphalt paver; bulldozer; C.M.I type equipment; endloaders; Kohman type loaders (dirt loading); lead greaseman; mucking machines; power grader; power scoops; power scrapers; push cat.

GROUP C - Air compressor (pressurizing shafts or tunnels); asphalt rollers; fork lifts; hoist (one drum); house elevators; man lift; power boilers (over 15 lbs. pressure); pump operators installing well points or other type of dewatering system; pumps (4" and over discharge); submersible pumps (4" and over discharge); trenchers 24" and under.

GROUP D - Compressors on building construction; conveyors (building material) generators; gunnite machines; mixers (capacity more than one bag); mixers (one bag capacity, side loader); post driver; post hole digger; pavement breaker (hydraulic or cable); road widening trencher; rollers; welder operator.

GROUP E - Backfillers & tampers; batch plant; bar and joint installing machines; bullfrogs; burlap and curing machines; clefplanes; concrete spreading mach.; crushers; deck hands; drum firemen (asphalt); farm type tractors pulling attachments; finishing machines; form trenchers; high pressure pumps over 1/2" discharge; hydro seeders; self-propelled power spreader; self-propelled sub-grader; tire repairmen; tractors pulling sheep's foot roller or grader;

GROUP F - Oiler; helper; signalman; inboard & outboard motor boat launch; light plant operator; power driven heaters (oil fired); power boilers (less than 15 lbs. pressure); pumps under 4" discharge; submersible pumps under 4" discharge.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Ashtabula (Cities of Ashtabula & Geneva), Cuyahoga, Lake, & Lorain Cos.	\$13.93				
Ashtabula (Rem. of Co.)	10.74	.45	.70		.02
Remaining Cos.	12.135	.55	.80		.02
BOILERMAKERS	12.23	.60	1.10		.03
BRICKLAYERS; Stonemasons:					
Ashtabula Co.	11.21	.60	.50		.01
Cuyahoga Co.	12.05	1.00	1.00		
Lake Co.	12.37	.60	.80		
Lorain Co.	12.20		.40		.01
Portage & Summit Cos.:					
Commercial Construction	11.61	.73	.55		.02
Residential Construction	9.61	.73	.55		.02
Stark Co.	10.79	.85	.60		.01
CARPENTERS; Millwrights; Piledrivermen; Soft Floor Layers; Ashtabula, Cuyahoga, & Lake Cos.					
Carpenters; Soft Floor Layers	12.10	.77	1.25		.03
Millwrights	11.95	.77	1.40		.03
Piledrivermen	12.10	.77	1.25		.03
Portage & Summit Cos.:					
Carpenters	11.55	.50	.70		
Millwrights	11.95	.77	1.40		.03
Piledrivermen	12.10	.77	1.25		.03
Soft Floor Layers	10.40	.40	.70		
Stark Co.:					
Carpenters	10.28	.50	.50		.02
Millwrights; Piledrivermen	10.76	.50	.50		.02
Soft Floor Layers	10.11	.50	.50		.02
Lorain Co.:					
Carpenters; Soft Floor Layers	10.66	.70	1.00	a	.04
Millwrights; Piledrivermen	10.66	.70	1.00	a	.04
CEMENT MASONS:					
Ashtabula Co.	11.21	.60	.50		
Cuyahoga Co.	13.73	.60	.80		
Lake Co.	12.37	.60	.40		
Lorain Co.	12.20				.01
Portage, Stark, & Summit Cos.:					
Commercial Construction	10.69	.60	.75		
Residential Construction (excluding Stark Co.)	9.72	.60	.75		

DECISION NO. OH78-2004

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
IRONWORKERS:					
Ashtabula (NE 1/4 of Co.)	10.74	1.86	1.01		.15
Ashtabula (except NE 1/4 of Co.), Cuyahoga, Lake, Lorain, Portage (excluding Ravenna Ordnance Depot), & Summit Cos.	12.22	.80	1.10		.03
Portage (Ravenna Ordnance Depot) Co.:					
Ornamental; Reinforcing; & Structural	11.76	.40	1.15		.07
Bucker-up	11.885	.40	1.15		.07
Sheeter	12.26	.40	1.15		.07
Stark Co.:					
Ornamental; Reinforcing; & Structural	11.08	.70	.75		.03
Bucker-up	11.205	.70	.75		.03
Sheeter-side	11.33	.70	.75		.03
Sheeter-roof	11.58	.70	.75		.03
LATHERS:					
Ashtabula, Cuyahoga, Lake, Lorain (Eastern portion), & Summit (No. part of Co.) Cos.	13.03		1.00		.01
Lorain (Rem. of Co.)	12.45				.01
Portage & Summit (So. part of Co.) Cos.	11.01	.57	.15		.01
LEADBURNERS	10.75	.40		d	.01
LINE CONSTRUCTION:					
Ashtabula Co. (Twps. of Colebrook, Orwell, Wayne, Williamsfield, & Windsor):					
Cable splicer op.; Linemen; Pole digging equipment op.	13.23	.45	3%		1/2%
Groundmen:					
Over 3 yrs.	10.58	.45	3%		1/2%
3rd yr.	9.92	.45	3%		1/2%
2nd yr.	9.26	.45	3%		1/2%
2nd 6 mos.	7.94	.45	3%		1/2%
1st 6 mos.	6.62	.45	3%		1/2%

DECISION NO. OH78-2004

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ELECTRICIANS:					
Cuyahoga & Lorain (Twp. of Columbia) Cos.	\$12.15	.50	3% + .43		.02
Commercial Construction	11.88	.70	3% + .50		.3%
Residential Construction	6.00	.70	3%		1%
Lorain (Except Columbia Twp.): Commercial Construction	12.50	.60	3% + .80		.1%
Residential Construction	6.78	.60	3%		.1%
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantus, Randolph, Ravenna, Rootstown, Shelbyville, Streetsboro, & Suffield), & Summit Cos.: Commercial Construction	12.33	.47	3% + .50		.2%
Residential Construction	7.54	.68	3% + .50		.2%
Portage (Rem. of Co.) & Stark Co.: Commercial Construction	11.90	.40	3% + .40		.3%
Residential Construction	8.05	.40	3% + .30		.3%
Ashtabula Co. (Twps. of Colebrook, Wayne, Williamsfield, Orwell, & Windsor)	12.59	.60	7%		.7%
Ashtabula Co. (Rem. of Co.)	12.20	.90	3% + .85		.2%
ELEVATOR CONSTRUCTORS:					
Ashtabula Co.: Elevator Constructors	11.04	.745	.56	4%+b+c	.035
Helpers	702JR	.745	.56	4%+b+c	.035
Helpers (Prob.)	502JR				
Cuyahoga, Lake, & Lorain Cos.: Elevator Constructors	12.79	.745	.56	4%+b+c	.035
Helpers	702JR	.745	.56	4%+b+c	.035
Helpers (Prob.)	502JR				
Portage, Stark, & Summit Cos.: Elevator Constructors	12.02	.745	.56	4%+b+c	.035
Helpers	702JR	.745	.56	4%+b+c	.035
Helpers (Prob.)	502JR				
GLAZIERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	12.83	.55	.65		.01
Portage, Stark & Summit Cos.: Commercial	10.09	.71	1.01		
Residential	6.39	.64	.52		

DECISION NO. OH78-2004

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vocation	
LINE CONSTRUCTION (CONT'D):				
Ashtabula Co. (Rem. of Co.):				
Cable splicer; Equipment op.;				1/2
Line Truck Driver; Linemen	.90	3% + .85		
Groundmen:				
Over 12 mos.	9.15	3% + .85		1/2
6 - 12 mos.	7.95	3% + .85		1/2
0 - 6 mos.	6.70	3% + .85		1/2
Cuyahoga & Lorain (Columbia				
Twp.) Cos.:				
Cable Splicers; Equipment	12.73	3%		1/2
ops.; Linemen; & Welders				
Lake Co.:				
Equipment Operators; Linemen	12.28	3% + .50		1/2
Lorain (Rem. of Co.) Co.:				
Cable Splicers; Equipment	12.50	3% + .80		1/2
ops.; & Linemen				
Portage (Twps. of Atwater,				
Aurora, Brimfield, Deerfield,				
Franklin, Mantus, Randolph,				
Ravenna, Rootstown, Shalers-				
ville, Streetsboro, & Suffield,				
& Summit Cos.:				
Linemen	12.08	3% + .65		1/2
Cable Splicers	12.88	3% + .65		1/2
Groundmen; Truck Drivers	6.04	3% + .65		1/2
Equipment Operators	9.06	3% + .65		1/2
Portage (Rem. of Co.) Co.:				
Cable Splicer; Linemen; Pole	13.23	3%		1/2
Digging Equipment				
Stark Co.:				
Cable Splicers; Linemen	11.90	3% + .40		1/2
Truck Drivers	7.95	3% + .40		1/2
Groundmen:				
Over 1 yr's experience	7.50	3% + .40		1/2
Under 1 yr's experience	7.05	3% + .40		1/2
Line Equipment ops.	10.60	3% + .40		1/2
MARBLE SETTERS:				
Ashtabula Co.	11.21	.50		.01
Cuyahoga Co.	12.05	1.00		
Lake Co.	12.37	.80		
Lorain Co.	12.20	.40		.01
Portage & Summit Cos.	10.55	.50		
Stark Co.	9.10	.45		

DECISION NO. OH78-2004

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vocation	
MARBLE SETTERS' FINISHERS:				
Cuyahoga, Lake & Lorain Cos.		1.00		
Portage & Summit Cos.	.68	.50		
PAINTERS:				
Ashtabula, Cuyahoga, Lake,				
Portage (No. of East West Turn-				
pike), & Summit (No. of East				
West Turnpike), Lorain (NE				
part):				
Brush; Rollers; Paperhangers	11.66	.74		.05
Siding Stage; Window Jack	11.96	.63		.05
Tapers	12.36	.74		.05
Lorain (Except NE part):				
Commercial Construction:				
Brush	8.70			
Spray	9.30			
Roller; Taping	8.95			
Residential Construction:				
Brush	8.35			
Spray	8.85			
Taping	8.75			
Portage (Rem. of Co.), & Summit				
(Rem. of Co.) Cos.:				
Brush; Rollers; Paperhangers	9.40	.60		
Drywall finisher & taper;				
Spray	9.90	.60		
Structural steel	9.65	.60		
Stark Co.: (Commercial)				
Brush; Roller	9.61	.60		.02
Paperhangers	9.71	.60		.02
Drywall	10.01	.78		.02
Spray	10.11	.60		.02
Drywall with machines	10.36	.78		.02
Residential				
Brush; Rollers	9.17	.60		.02
Paperhangers	9.27	.78		.02
Spray	9.67	.78		.02
Drywall	9.57	.60		.02
Drywall with machines	9.92	.78		.02
PIPEFITTERS:				
Ashtabula, Cuyahoga, Lake, &				
Lorain Cos.	11.97	1.05		.05

DECISION NO. OH78-2004

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
PLASTERERS:					
Ashtabula Co.	\$11.21	.60	.50		.01
Cuyahoga Co.	14.03				
Lake Co.	12.37	.60	.80		
Lorain Co.	12.20	.60	.40		.01
Portage, Stark, & Summit Cos.	10.56	.60	.75		.01
PLUMBERS:					
Ashtabula, Cuyahoga, Lake, & Summit (No. of Rte. #303) Cos.	12.28	.75	1.00		.02
Lorain Co.	12.25	.60	.88		.05
Portage & Summit (So. of Rte. #303) Cos.	11.46	.79	.90		.05
Stark Co.	11.42	.45	.55	e	.05
ROOFERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	13.18	.25	.50		
Portage, Stark, & Summit Cos.	11.18	.73	.55		.02
SHEET METAL WORKERS:					
Ashtabula, Cuyahoga, & Lake Cos.	12.20	.60	1.13		.04
Lorain Co.	12.68	.60	.60		.04
Portage, Stark, & Summit Cos.	10.91	.61	.84		.05
SPRINKLER FITTERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	11.42	1.05	.80		.05
Lake, Portage, Stark, & Summit Cos.	12.30	.65	.95		.08
STEAMFITTERS:					
Lorain Co.	12.25	.60	.88		.05
TERRAZZO WORKERS:					
Ashtabula Co.	11.21	.60	.50		.01
Cuyahoga Co.	12.05	1.00	1.00		
Lake Co.	12.37	.60	.80		.01
Lorain Co.	12.20	.60	.40		
Portage & Summit Cos.	10.55	.68	.50		
Stark Co.:					
Terrazzo Workers	9.05	.70	.45		
Terrazzo Grinders	8.52	.70	.45		
TERRAZZO WORKERS' FINISHERS:					
Cuyahoga, Lake, & Lorain Cos.	12.12		.85		
Portage & Summit Cos.	10.05	.68	.50		
Stark Co.	8.09	.70	.45		

DECISION NO. OH78-2004

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
TILE SETTERS:					
Ashtabula Co.	11.21	.60	.50		
Cuyahoga Co.	13.555		1.36		
Lake Co.	12.37	.60	.80		.01
Lorain Co.	12.20		.40		
Portage & Summit Cos.	10.55	.68	.50		
Stark Co.	8.94	.70	.45		
TILE SETTERS' FINISHERS:					
Cuyahoga, Lake, & Lorain Cos.	11.94		1.00		
Portage & Summit Cos.	10.05	.68	.50		
Stark Co.	8.09	.70	.45		

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;
E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

- 2 paid holidays: B & D
- 7 paid holidays; A through F, & Day after Thanksgiving
- Employee contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
- 9 paid holidays: A through F, Washington's Birthday, Good Friday, & Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.
- 1 paid holiday: D providing the employee has worked 5 consecutive days before and after the holiday.

LABORERS (Ashtabula County):
Sheeting & Shoring Men; Asphalt
Rakers & Tamers; Dumpmen
(Batch Truck); Signalmen;
Concrete Workers; Building
Wreckers; Tool Checkers;
Carpenters' Tenders; Con-
struction Laborers; All work
not mentioned in classifica-
tions below to be paid at the
rate of construction laborers

9.95

NOTICES

DECISION NO. OH78-2004

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
LABORERS (Lorain County): Building & Construction; Signalmen; Flagmen; Tool Crib; Carpenter Tender; Finisher Tender; Concrete Handler; Guard Rail Erector Bottom Men; Scaffold Builder; Tunnel Laborers; Pipelayers; Air & Power Driven Tools; Burner on demolition work; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blasters; Creosote Workers; Mortar Mixers; Form Setter; Mason Tender; Plasterers' Tenders; Hod Car- rier; Laser Beam set up man Gunnite Operator LABORERS (Portage & Summit Cos.): Residential Construction Common Laborers; Welders' Helpers; Carpenters' Tenders; Landscape Laborers; Mason Tender; Concrete Bucket Tender Air Driven Boring Machine; Tamper ops.; Asphalt Raker; Paving Bed Maker; Material Mixer; Wire Mesh Handler; Hook-up man on demolition work; Scaffold Erector; Structural Precast Erector; Power Tools-Air, Gas, or elec- tric Pipe Layers; Rock Drillers; Muckers--tunnel; Burners; Form Setters; Power Saws; Jackhammer Barco Type Tamper; Bottom man; Hod Carrier; Power Buggy or Power Wheelbarrow	9.53	.65	.55		.10
LABORERS (CONT'D): Spreaders Box Men (asphalt); Stone Masons' Assistant; Plasterers or Mortar Mixers; Squeegee man Air & Machine Driven Tool op.; Industrial Sewer Cleaning; Sewer Pipe Layers; Bottom Men (6' & over); Power Driven Wheelbarrows & Sweepers; Brick Batter & Droppers; Burning & Cutting Torches; Mud Jacking of floors Stackmen; Swinging Scaffold men Tunnel Laborers Gunnite ops. Power Blasters LABORERS (Cuyahoga County): Construction Sewer & Utility; Power Driven Tools & Vibrators Jackhammer; Acetylene Burners; Muckers Swinging Scaffolds Gunnite ops.; Blasters; Shooter; Caisson; Well Cylinders; Mine Workers w/o air; & Cofferdams Topman on free standing radial stack LABORERS (Lake County): Building & Construction Gunnite op.; Blasters & Shooters; Caissons; Wells; Cylinder cof- ferdams; Mine Workers w/o air; Swing Scaffolds; Acetylene Burners; Vibrators; Top man on free standing radial stacks; Slip forms higher than 30'; Fire Brick Tenders	10.10				
	10.15				
	10.25				
	10.35				
	10.45				
	10.50				
	9.97	1.27	1.20		
	10.12	1.27	1.20		
	10.17	1.27	1.20		
	10.22	1.27	1.20		
	10.29	1.27	1.20		
	10.47	1.27	1.20		
	9.80	.55	.40		
	10.05	.55	.40		

DECISION NO. OH78-2004

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
LABORERS (CONT'D): Spreaders Box Men (asphalt); Stone Masons' Assistant; Plasterers or Mortar Mixers; Squeegee man Air & Machine Driven Tool op.; Industrial Sewer Cleaning; Sewer Pipe Layers; Bottom Men (6' & over); Power Driven Wheelbarrows & Sweepers; Brick Batter & Droppers; Burning & Cutting Torches; Mud Jacking of floors Stackmen; Swinging Scaffold men Tunnel Laborers Gunnite ops. Power Blasters LABORERS (Cuyahoga County): Construction Sewer & Utility; Power Driven Tools & Vibrators Jackhammer; Acetylene Burners; Muckers Swinging Scaffolds Gunnite ops.; Blasters; Shooter; Caisson; Well Cylinders; Mine Workers w/o air; & Cofferdams Topman on free standing radial stack LABORERS (Lake County): Building & Construction Gunnite op.; Blasters & Shooters; Caissons; Wells; Cylinder cof- ferdams; Mine Workers w/o air; Swing Scaffolds; Acetylene Burners; Vibrators; Top man on free standing radial stacks; Slip forms higher than 30'; Fire Brick Tenders	10.10				
	10.15				
	10.25				
	10.35				
	10.45				
	10.50				
	9.97	1.27	1.20		
	10.12	1.27	1.20		
	10.17	1.27	1.20		
	10.22	1.27	1.20		
	10.29	1.27	1.20		
	10.47	1.27	1.20		
	9.80	.55	.40		
	10.05	.55	.40		

DECISION NO. OH78-2004

DECISION NO. OH78-2004

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
LABORERS (CONT'D)					
Gunite Nozzlemen; Tunnel Miners	9.77	.65	.40		.16
Water Line Caulkers; Dynamite Men; Pump Hose Nozzlemen					
LABORERS (Stark County):					
Building & Construction; Signalmen; Flagmen; Tool Cribman; Carpenters' Tenders; Finisher Tenders; Concrete Handler;					
Utility Construction Laborer; Guard Rail Erector	8.41	.65	.55		.10
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipe Layers; Air & Power Driven Tools; Burner on demolition; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blaster; Creosote Workers; Mortar Mixers; Form Setter; Mason Tender; Plasterers' Tenders; Hod Carrier; Laser Beam Set-Up Men					
Gunite Operator	8.61	.65	.55		.10
POWER EQUIPMENT OPERATORS:	9.01	.65	.55		.10
Ashtabula, Cuyahoga, Lake, & Lorain Cos.:					
GROUP A	12.37	.61	1.00		.11
GROUP B	12.22	.61	1.00		.11
GROUP C	11.87	.61	1.00		.11
GROUP D	11.09	.61	1.00		.11
GROUP E	10.77	.61	1.00		.11
GROUP F	9.09	.61	1.00		.11
Portage, Stark, & Summit Cos.:					
GROUP A	12.09	.61	1.00		.11
GROUP B	11.93	.61	1.00		.11
GROUP C	11.58	.61	1.00		.11
GROUP D	10.77	.61	1.00		.11
GROUP E	10.44	.61	1.00		.11
GROUP F	8.73	.61	1.00		.11

GROUP A - A-Frames; All rotary drills used on caisson work for foundations & sub-structure work; Boller op. or compressor op. when compressor or boiler is mounted on crane (piggyback operation); Boom trucks (all types); Cableways; cherry pickers; Combination concrete mixer & tower; Concrete pumps; Cranes (all types); Derricks (all types); Draglines; Elevating grader or Euclid loader; Floating equipment; Gradalls; Helicopter op. (hoisting builders materials); Hoisting engines (two or more drums); Lift materials; Hoes (all types); Hoisting engines (all types); Maintenance engineer slab or panel jack ops.; Locomotives (multiple drum); Mobile concrete pumps (mechanic or welder); Mixer paving (multiple drum); Mobile concrete pumps with boom; Panelboard (all types on site); Pile driver; Power shovels; Side booms; Slip form pavers; Straddle carriers (building construction site); Tower derricks; Trench machines (over 24" wide)

GROUP B - Asphalt paver; Bulldozer; CMT type equipment; Endloaders; Kohman type loaders (dirt loading); Mucking machines; Power graders; Power scoops; Power scrapers; Push cats

GROUP C - Air compressor (pressurizing shafts or tunnels); All asphalt rollers; Fork lifts; Hoist (one drum); House elevators; Man lift; Power boiler (over 15 lbs., pressure); Pump op. installing or operating well points or other type of dewatering system; Pumps (4" & over discharge); Submersible pumps (4" & over discharge); Trenchers (24" & under)

GROUP D - Compressors on building construction; Conveyors (building material); Gunite machines; Mixers (cap., more than one bag); Mixers (one bag cap., side loader); Post driver; Post hole digger; Pavement breaker (hydraulic or cable); Road widening trencher; Rollers; Welder operator

GROUP E - Backfillers and tampers; Batch plant; Bar & joint installing machines; Bull floats; Burlap & curing machines; Clefplanes; Concrete spreading machines; Crushers; Drum fireman (asphalt); Farm type tractors (pulling attachments); Finishing machines; Form trenchers; High pressure pumps (over 4" discharge); Hydro seeders; Self-propelled power spreader; Self-propelled subgrader; Tractors (pulling sheep foot roller or grader); Tire repairman; Vibratory compactors (with integral power)

GROUP F - Oiler; Helpers; Signalman; Light plant op.; Power driven heaters (oil fired); Power boilers (less than 15 lbs. pressure); Submersible pumps (under 4" discharge); Pumps (under 4" discharge)

SUPERSEDEAS DECISION

STATE: OHIO
 COUNTY: *SEE BELOW
 DATE: Date of Publication
 DECISION NO.: OH77-2133, dated September 2, 1977 in 42 FR 44477
 SUPERSEDES DECISION NO. OH77-2133, dated September 2, 1977 in 42 FR 44477
 DESCRIPTION OF WORK: Building Construction (Does not include single family homes and garden type apartments up to and including 4 stories).

*ASHLAND, CARROLL, COLUMBIANA, COSHOCTON, HOLMES, MEDINA, TUSCARAWAS, & WAYNE

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
ASBESTOS WORKERS:					
Ashland, Coshocton, Holmes, Medina, Tuscarawas & Wayne Cos.	.55	.80			.02
Carroll & Columbiana Cos.	.45	.70			.02
BOILERMAKERS:					
Ashland Co.	.70	1.00			.03
Carroll, Coshocton, Holmes, Medina, Tuscarawas, & Wayne Cos.	.60	1.10			.03
Columbiana Co.	7.5%	7%			.01
BRICKLAYERS; Marble Setters; Stonemasons; Terrazzo Workers; & Tile Setters:					
Ashland, Holmes & Wayne (except Milton & Chippewa Twp.) Cos.	.60	1.00			.02
Carroll, Columbiana (Twp. of Knox, Butler, West & Hanover), & Tuscarawas Cos.:					
Bricklayers; Stonemasons	.85	.60			.01
Marble Setters	.70	.45			
Terrazzo Workers	.70	.45			
Tile Setters	.70	.45			
Columbiana (Twp. of Center, Elk Run, Fairfield, Middletown, New Waterford, Perry, Salem, & Unity) Co.:					
Bricklayers; Stonemasons	.60	.60			.02
Marble Setters; Terrazzo Workers; & Tile Setters					
Columbiana (Rem. of Co.) Co.	.60	.50			.02
Coshocton Co.	.60	.50			.02
Medina (Twp. of Hinckley, Grand, Brunswick, Medina, Liverpool, Montville, & York) Co.:					
Bricklayers; Marble setters; Stonemasons; & Terrazzo Workers	1.00	1.00			.01
Tile Setters		1.36			

NOTICES

5999

FEDERAL REGISTER, VOL. 43, NO. 29—FRIDAY, FEBRUARY 10, 1978

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Medina (Twp. of Nadsaworth, Guilford, Westfield, Lafayette, & Sharon) & Wayne (Chippewa & Milton Twp.) Cos.:					
Bricklayers; Stonemasons	.73	.55			.02
Marble Setters; Terrazzo Workers; & Tile Setters	.68	.50			
Medina (Twp. of Litchfield, Chatham, Harrisville, Homer, & Spencer) Co.		.40			.01
CARPENTERS; Millwrights; Piledrivers; & Soft Floor Layers:					
Ashland Co.:					
Carpenters; Soft Floor Layers	.70	1.00			.04
Millwrights	.77	1.40	a		.03
Piledrivers	.77	1.25			.03
Carroll, Tuscarawas, & Wayne Cos.:					
Carpenters	.50	.50			.02
Millwrights; Piledrivers	.50	.50			.02
Soft Floor Layers	.50	.50			.02
Columbiana Co.:					
Carpenters	.87	.85			.02
Millwrights	.50	.60			.02
Piledrivers	.55	10%			.5%
Soft Floor Layers	.87	.65			.02
Coshocton & Holmes Cos.:					
Carpenters; Soft Floor Layers	.53	.70			.02
Millwrights	.53	.70			.02
Piledrivers	.53	.70			.02
Medina Co.:					
Carpenters	.50	.70			.03
Millwrights	.77	1.40			.03
Piledrivers	.77	1.25			.03
Soft Floor Layers	.40	.70			.03
CEMENT MASONS; Plasterers:					
Ashland Co.:					
Cement Masons					
Plasterers					
Carroll & Tuscarawas Cos.	.85	.60			.01

FEDERAL REGISTER, VOL. 43, NO. 29—FRIDAY, FEBRUARY 10, 1978

DECISION NO. OH78-2005

Basic Hourly Rates	Fringe Benefits, Payments			Education end/or Appr. Tr.
	H & W	Pensions	Vacation	
\$10.57	.50	.50		.05
10.79	.85	.60		.01
11.61	.60			.03
10.33	.60	.50		.02
11.18	.05	1.00		.02
10.69	.60	.75		.01
10.56	.60	.75		.01
12.20		.40		.1%
11.50	.45	3% + .50		
Carroll (N ½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green, & Wayne Twps.) Cos.	.40	3% + .40	8%	.3% ½%
Carroll (Rem. of Co.) Co.	6%	9%		
Columbiana (Twps. of Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West, & Yellow Creek) Co.	.88	7%		.07
Columbiana (Twps. of Butler, Fairfield, Perry, Salem, & Unity) Co.	.56	7%		.3%
Coshocton & Tuscarawas (Auburn, York, Jefferson, Clay, Rush, Oxford, Washington, Salem, Perry, & Bucks Twps.) Cos.	.40	3% + .62		.03
Medina (Twps. of Litchfield, & Liverpool) Co.	.60	3% + .80		.1%
Medina (Rem. of Co.), & Wayne (N ½ of Co.)	.47	3% + .50		.2%

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
ELEVATOR CONSTRUCTORS:				
Ashland, Coshocton, Holmes, & Tuscarawas Cos.:				
\$11.705	.745	.56	4½+b+c	.035
Elevator Constructors	.745	.56	4½+b+c	.035
Helpers				
Helpers (Prob.)				
Carroll Co.:				
Elevator Constructors	.745	.56	4½+b+c	.035
Helpers	.745	.56	4½+b+c	.035
Helpers (Prob.)				
Columbiana Co.:				
Elevator Constructors	.745	.56	4½+b+c	.035
Helpers	.745	.56	4½+b+c	.035
Helpers (Prob.)				
Medina & Wayne Cos.:				
Elevator Constructors	.745	.56	4½+b+c	.035
Helpers	.745	.56	4½+b+c	.035
Helpers (Prob.)				
GLAZIERS:				
Carroll, Coshocton, Holmes, Medina (S ½), Tuscarawas, & Wayne Cos.	.71	1.01		.01
Medina (N ½) Co.	.55	.65		
IRONWORKERS:				
Ashland, Carroll, Coshocton, Holmes, Tuscarawas, & Wayne Cos.:				
Ornamental; Reinforcing; & Structural.	.70	.75		.03
Sheeter-roof	.70	.75		.03
Sheeter-side	.70	.75		.03
Bucker-up	.70	.75		.03
Columbiana Co.:				
Ornamental; Reinforcing; & Structural	.40	1.15		.07
Sheeters	.40	1.15		.07
Bucker-up	.40	1.15		.07
Medina Co.	.80	1.10		.03
LATHERS:				
Wayne Co.	.57	.15		.01
LEADBURNERS	.40		d	.01

DECISION NO. OH78-2005

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Wayne Co.: Building & Construction; Signalmen; Flagmen; Tool crib- man; Carpenters' tenders; Finisher tenders; Concrete handler; Utility construction laborers; Guard rail erector Bottom men; Scaffold builders; Tunnel laborers; Pipe layers; Air & power driven tools; Burner on demolition; Swing- ing scaffold; Mucker; Caisson worker; Cofferdam worker; Powder men & dynamite blaster; Crescote workers; Mortar mixers; Form setters; Mason tender; Plasterers' tenders; Hod carrier; Laser beam set-up men	8.41	.65	.55		.10
Gunnite operator.	8.61 9.01	.65 .65	.55 .55		.10 .10
POWER EQUIPMENT OPERATORS: Ashland, Carroll, Coshocton, Holmes, Tuscarawas, & Wayne Cos.:					
Group A	12.09	.61	1.00		.11
Group B	11.93	.61	1.00		.11
Group C	11.58	.61	1.00		.11
Group D	10.77	.61	1.00		.11
Group E	10.44	.61	1.00		.11
Group F	8.73	.61	1.00		.11
Medina Co.:					
Group A	12.37	.61	1.00		.11
Group B	12.22	.61	1.00		.11
Group C	11.87	.61	1.00		.11
Group D	11.09	.61	1.00		.11
Group E	10.77	.61	1.00		.11
Group F	9.09	.61	1.00		.11

GROUP A - A-frames, air compressor on steel erection, rotary drills used on calson work for foundations and sub-structure work, boiler or compressor operator mounted on train (piggyback operation), boom trucks (all types), cableways, cherry pickers, combination concrete mixer and tower, concrete pumps, cranes (all types), derricks (all types), draglines, dredge (dipper, clam or suction) 3 man crew, elevating grader or euclid loader, floating equipment, gradalls, helicopter operator and helicopter winch operator when hoisting building materials, hoes (all types), hoisting engines (two or more drums), lift slab or panel jack operator, locating motives (all types), maintenance engineer (mechanic or welder), mixer paving (multiple drum), mobile concrete pumps with boom, panelboard (all types on site), pile driver, power shovels, side booms, slip forms pavers, straddle carriers (building construction on site), hammerhead tower cranes, trench machines (over 24"wide), tug boat

GROUP B - Asphalt paver, bulldozer, C.M.I. type equipment, endloaders, Kohlman type loaders (dirt loading), lead greaseman, mucking machines, power grader, power scoops, power scrapers, push cat.

GROUP C - Air compressor (pressurizing shafts or tunnels), asphalt rollers, fork lifts, hoist (one drum), house elevators, man lift, power boilers (over 15 lbs. pressure), pump operators installing well points or other type of dewatering system, pumps (4" and over discharge), Submersible pumps (4" and over discharge), trenches 24" and under

GROUP D - Compressors on building construction, conveyors (building material) generators, gunnite machines, mixers, (capacity more than one bag), mixers (one bag capacity; side loader), post driver, post hole digger, pavement breaker (hydraulic or cable), road widening trencher rollers, welder operator machines, bull floats, burlap and curing machines, clefplanes, concrete spreading ball, crushers, deck hands, drum fireman (asphalt), farm type tractors pulling attachments, finishing machines, form trenchers, high pressure pumps over 4" discharge, hydro seeders, self propelled power spreader, self propelled sub-grader, tire repairman, tractor pulling sheeps foot roller or grader, vibratory compactors (with integral power)

GROUP E - Oiler, helpers, signalman, inboard & outboard motor boat launch, light plant operator, power driven heaters (oil fired), power boilers (less than 15 lbs. pressure, pumps under 4" discharge, submersible pumps under 4" discharge

DECISION NO. OH78-2005

POWER EQUIPMENT OPERATORS
Columbiana Co.

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vocation		
CLASS I	\$12.01	.65	.80			.14
CLASS II	11.32	.65	.80			.14
CLASS III	10.68	.65	.80			.14
CLASS IV	10.27	.65	.80			.14
CLASS V	10.17	.65	.80			.14
CLASS VI	12.28	.65	.80			.14

CLASS I - Asphalt planer heater; Austin western & similar type; Backhoe;
Batch plant-control mix; Batch plant-portable concrete; Berm builder-
automatic; Backfiller w/drag attachment; Boat derrick; Boat-tug;
Boring mach. attached to tractor; Bulldozer; C.M.I. road
builder & similar types; Cable pincer & layer; Carrier-straddle; Carryall -
scraper or scoop; Chicago boom; Compactor w/blade attached; Concrete
spreader finisher comb.; Crane; Crane-stationary or climbing; Crane-
electric overhead; Crane-side boom; Crane truck; Crane-tower;
Derrick-boom; Derrick-car; Diggers-wheel (not trencher or road widener);
Double line; Drag line; Dredge; Drill-Kenny or similar type; Electromatic;
Fork lift; Frankie pile; Gradall; Grader-power; Gurry; Gurry-self-propelled;
High lift; Hoist-monorail; Hoist-stationary & mobile tractor; Hoist-2 or 3;
Jackall; Jumbo mach.; Kocal or Kuhlman; Land-seagoing vehicle; Loader -
Elevating; Loader-front end; Locomotive; Mechanic as welder; Metro clip
harvester w/boom; Mucking mach.; Paver-asphalt finishing mach.; Paver-
road concrete; Paver-clip form; Place crete mach; Post driver; Power
driven hydraulic pumps & jacks; pump crete machine; Regulator-
ballast; Reigs-drilling; Shovels; Spikemaster; Stonecrusher; Tie puller
& loader; tie tamper; Tractor-double boom; tractor w/attachments; Trucks-
boom; Truck-tie-assigned to job; Trench mach.; Tunnel machine (Mark 21
Java or similar); Whiley

CLASS II - Asphalt plant; bending machine; Doring mach.; Chip harvester
w/o boom; cleaning mach.- pipeline type; Coating Much-pipeline type;
Concrete belt placer; concrete finisher; Concrete planer or asphalt;
Concrete spreader; Elevator; Fork lift walk behind; form line mach.;
Grease truck op.; Grout pump; Gunnite mach.; Huck bolting Mach.;
Hydraulic scaffold; Paving breaker; Pipe dresm; Pot firemen; Power
broom; Refrigeration plant; Sason derrick; Seeding Mach.; Self-
propelled mobile vibrator compactor or roller; Hoist-single drum;
Soil stabilizer (pump type); Spray cure Mach.-Self propelled; Straw
blower mach.; Sub-grader; Tube finisher or broom C.M.I. of similar type;
Tugger hoist

DECISION NO. OH78-2005

CLASS III - Batch plant-job related; Boiler op.; Compressor (125 CFM or over);
Curb builder (self-propelled); Generator-steam; Jack-hydraulic driven;
Mixer-concrete; Mulching Mach.; Pin puller; Pulverizer; Pump; Road
finishing mach. (pulltype); roller; Saw-concrete-self propelled;
signal man; spray cure mach.-motor powered; Spreader (side driver
shoulder attachment); Tractor; Trencher-form; Water Blaster
CLASS IV - Brake man; Compressor under 125 CFM; Conveyor; Conveyor 12 feet
or under other than servicing bricklayers; Deck hand; Drill wagon; fireman;
Generator sets; Heaters-portable power (2 to 5); Helper-mechanic; Jacks
Hydraulic (railroad); Ladavator; Roller (walk behind 1 ton or over); Steam
jenny; Syphons; Vibrator-gasoline; Welding machines (2) (fuel burning)

CLASS V - Oiler

CLASS VI - Rigs-pile driving or caisson type

CLASS VI - Rigs-pile driving or caisson type

LINE CONSTRUCTION:

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vocation		
Ashland Co.:						
Equipment operators; Linemen	\$11.50	.45	3% + .50			1/2
Line truck drivers	7.48	.45	3% + .50			1/2
Groundman	6.90	.45	3% + .50			1/2
Carroll (S. of Fox, Harrison, Rose, & Washington Tps.) Co.:						
Linemen; Line equipment ops.;	12.95	6%	9%	8%		1/2
& truck drivers	8.42	6%	9%	8%		1/2
Groundman	13.35	6%	9%	8%		1/2
Cable splicer						
Carroll (Rem. of Co.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Tps.), & Wayne (S. of Baughman, Chester, Green, & Wayne Tps.) Cos.:						
Cable splicers; Linemen	11.90	.40	3% + .40			1/2
Line equipment operators	10.60	.40	3% + .40			1/2
Groundmen:						
Under 1 yr's experience	7.05	.40	3% + .40			1/2
Over 1 yr's experience	7.50	.40	3% + .40			1/2
Truck drivers	7.95	.40	3% + .40			1/2

DECISION NO. OH78-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Columbiana Co. (Rem. of Co.): Linemen; Heavy equipment Operator	\$11.03	8%	7%		1/2%
Groundmen; Truck drivers	9.97	8%	7%		1/2%
Cable splicers	11.43	8%	7%		1/2%
Columbiana (Butler, Fairfield, Perry, Salem, & Unity Twp.) Co.:					
Linemen; Cable splicers;					
Operator - pole digging equipment	13.23	.45	3%		1/2%
Groundman 1st 6 mos.	6.62	.45	3%		1/2%
Groundman 2nd 6 mos.	7.94	.45	3%		1/2%
Groundman 2nd yr.	9.26	.45	3%		1/2%
Groundman 3rd yr.	9.92	.45	3%		1/2%
Groundman over 3 yrs.	10.58	.45	3%		1/2%
Coshocton & Tuscarawas (Rem. of Co.) Cos.:					
Cable splicers; Linemen;	11.43	.35	3%		1/2%
Equipment ops.					
Groundmen:					
0 - 6 mos.	5.92	.35	3%		1/2%
After 6 mos.	6.30	.35	3%		1/2%
After 12 mos.	6.72	.35	3%		1/2%
After 18 mos.	7.11	.35	3%		1/2%
Medina (Nw part) Co.:					
Linemen; Cable splicers;	12.50	.60	3% + .80		1/2%
Equipment ops.					
Beginning truck driver ground-	5.96	.60	3% + .80		1/2%
man; Beginning groundman					
Advanced truck driver (winch)					
groundman; Groundman (over 2	7.04	.60	3% + .80		1/2%
years' experience)					
Medina (Rem. of Co.), & Wayne (N 1/2 of Co.):					
Linemen	12.08	.57	3% + .65		1/2%
Cable splicer	12.88	.57	3% + .65		1/2%
Truck drivers; Groundmen	6.04	.57	3% + .65		1/2%
Equipment operators	9.06	.57	3% + .65		1/2%

[FR Doc. 78-3457 Filed 2-9-78; 8:45 am]

Registered
Federal

FRIDAY, FEBRUARY 10, 1978
PART IV



DEPARTMENT OF
STATE



FISHERY
CONSERVATION AND
MANAGEMENT ACT
OF 1976

Applications for Permits To Fish
Off Coasts of U.S.

[4710-01]

DEPARTMENT OF STATE

[Public Notice 592]

**FISHERY CONSERVATION AND MANAGEMENT
ACT OF 1976****Applications for Permits To Fish Off the Coasts
of the United States**

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after Febru-

ary 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Additional applications for fishing during 1978 have been received from the Governments of Korea, Japan and Mexico and are published herewith.

Dated: February 6, 1978.

DONALD J. YELLMAN,
Acting Director,
Office of Fisheries Affairs.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

NO. MX-78-0025

1. Name of Vessel ESPANEX I 2. Vessel Identifier (Call Sign) XCAL
 3. Type of Vessel STERN TRAWLER 4. Length 45 mts.
 5. Gross Tonnage 489 6. Net Tonnage 220 7. Speed (knots) 11
 8. Owner's Name and Address COMPANIA IMPULSORA DEL CALANAR, S.A.
CALLE 20/25 CIUDAD DEL CARMEN, CAMPECHE, MEXICO
 9. Types of Processing Equipment FREEZER

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity		
			Catching	Processing	Other Support
N W A	LONG-FINNED SQUID	BOTTOM TRAWL	X	X	
N W A	SHORT-FINNED SQUID	MID-WATER TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

NO. MX-78-0026

1. Name of Vessel PARFALLEIRO 2. Vessel Identifier (Call Sign) XCAR
 3. Type of Vessel STERN TRAWLER 4. Length 79 mts.
 5. Gross Tonnage 1,330 6. Net Tonnage 775 7. Speed (knots) 15
 8. Owner's Name and Address PESCADORES DE MERLUZA, S.A. DE C.V.
ALVATROS 198, MACATLAN, SINALOA
 9. Types of Processing Equipment FLASH FREEZER, FEADER, Eviscerator,
FILLETTER, FISH MEAL PLANT, COD LIVER OIL PLANT.

10. Fisheries for Which Permit is Requested:

Fishery	Target Species	Gear To Be Used	Activity		
			Catching	Processing	Other Support
N W A	LONG-FINNED SQUID	BOTTOM TRAWL	X	X	
N W A	SHORT-FINNED SQUID	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0091

1. Name of Vessel EBISU MARU NO.21 2. Vessel Identifier (Call Sign) JABU
 3. Type of Vessel DANISH SEINER 4. Length 32 M.
 5. Gross Tonnage 124 M.T. 6. Net Tonnage 42 M.T. 7. Speed (knots) 12 KT.
 8. Owner's Name and Address MARUOH SUISEN CO., LTD.
3-7-5, SHIKINAI, OTARD-SHI, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity		
			Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	YELLOWFIN SOLE	BOTTOM TRAWL	X	X	
	OTHER FLOUNDER	BOTTOM TRAWL	X	X	
	SABLE FISH	BOTTOM TRAWL	X	X	
	HERRING	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	OTHER SPECIES	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0200

1. Name of Vessel TENYU MARU NO.21 2. Vessel Identifier (Call Sign) JDFH
 3. Type of Vessel DANISH SEINER 4. Length 30 M.
 5. Gross Tonnage 125 M.T. 6. Net Tonnage 44 M.T. 7. Speed (knots) 13
 8. Owner's Name and Address ISE GYOYOBU CO., LTD.
12-3, NISHIKICHO, OTARU-CITY, HOKKAIDO, JAPAN
 9. Types of Processing Equipment -

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity		
			Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X		
	SABLEFISH	BOTTOM TRAWL	X		
	PACIFIC COD	BOTTOM TRAWL	X		
	YELLOWFIN SOLE	BOTTOM TRAWL	X		
	OTHER FLOUNDER	BOTTOM TRAWL	X		
	HERRING	BOTTOM TRAWL	X		
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X		
	SQUID	BOTTOM TRAWL	X		
	OTHER SPECIES	BOTTOM TRAWL	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-1073

1. Name of Vessel SANFUKU MARU 2. Visual Identif. 2. flier (Call Sign) JLKW
 3. Type of Vessel CARGO/TRANSPORT 4. Length 87 M
 5. Gross Tonnage 1,984 M.T. 6. Net Tonnage 1,111 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address NANKO SHIPPING CO., LTD.
KAMAB-CHO, MINAMITRAITA-CUN, OITA-KEN, 876-24, JAPAN
 9. Types of Processing Equipment

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK				X
	PACIFIC OCEAN PERCH				X
	SABLEFISH				X
	YELLOWFIN SOLE				X
	OTHER FLOUNDER				X
	PACIFIC COD				X
	OTHER SPECIES				X
	HERRING				X
	SQUID				X
GOA	POLLOCK				X
	PACIFIC COD				X
	FLOUNDER				X
	PACIFIC OCEAN PERCH				X
	OTHER ROCKFISH				X
	OTHER SPECIES				X
	SQUID				X
	ATKA MACKEREL				X
CHB	TANNER CRAB				X
SBL	SABLEFISH				X

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2006

1. Name of Vessel SHOHO MARU NO. 25 2. Visual Identif. 2. flier (Call Sign) JLDB
 3. Type of Vessel DANISH SEINER 4. Length 31 M.
 5. Gross Tonnage 125 M.T. 6. Net Tonnage 40 M.T. 7. Speed (knots) 13 KT.
 8. Owner's Name and Address SHOHO SUISAN CO., LTD.
6-10, NISHIKIMACHI, OTARU-SHI, HOKKAIDO, JAPAN
 9. Types of Processing Equipment

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X		
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X		
	PACIFIC COD	BOTTOM TRAWL	X		
	YELLOWFIN SOLE	BOTTOM TRAWL	X		
	OTHER FLOUNDER	BOTTOM TRAWL	X		
	SABLE FISH	BOTTOM TRAWL	X		
	HERRING	BOTTOM TRAWL	X		
	SQUID	BOTTOM TRAWL	X		
	OTHER SPECIES	BOTTOM TRAWL	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2007

1. Name of Vessel SOHO MARU NO. 32 2. Visual Identif. 2. flier (Call Sign) TKTA
 3. Type of Vessel DANISH SEINER 4. Length 32 M.
 5. Gross Tonnage 125 M.T. 6. Net Tonnage 40 M.T. 7. Speed (knots) 12
 8. Owner's Name and Address FUKUSHIMA GYOGYO CO., LTD.
57, KAMISAME, SANEMACHI, HACHINOHE-CITY, AOMORI-KEN, JAPAN
 9. Types of Processing Equipment

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X		
	SABLEFISH	BOTTOM TRAWL	X		
	PACIFIC COD	BOTTOM TRAWL	X		
	YELLOWFIN SOLE	BOTTOM TRAWL	X		
	OTHER FLOUNDER	BOTTOM TRAWL	X		
	HERRING	BOTTOM TRAWL	X		
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X		
	SQUID	BOTTOM TRAWL	X		
	OTHER SPECIES	BOTTOM TRAWL	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2008

1. Name of Vessel KAKUYO MARU NO. 11 2. Visual Identif. 2. flier (Call Sign) JQMN
 3. Type of Vessel PAIR TRAWLER 4. Length 38 M.
 5. Gross Tonnage 150 M.T. 6. Net Tonnage 59 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address HOKUYO SUISAN CO., LTD.
9-13, TSUKIJI 7-CHOME, CHUO-KU, TOKYO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X	X	
	SABLEFISH	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	YELLOWFIN SOLE	BOTTOM TRAWL	X	X	
	OTHER FLOUNDER	BOTTOM TRAWL	X	X	
	HERRING	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	OTHER-SPECIES	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2009

1. Name of Vessel KAKUYO MARU NO.12 Visual Identif. JQWN-1
 2. Flag (Call Sign)
 3. Type of Vessel PAIR TRAWLER 4. Length 38 M.
 5. Gross Tonnage 150 M.T. 6. Net Tonnage 59 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address HOKUYO SUISAN CO., LTD.
9-13, TSUKIJI 7-CHOME, CHUO-KU, TOKYO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X	X	
	SABLEFISH	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	YELLOWFIN SOLE	BOTTOM TRAWL	X	X	
	OTHER FLOUNDER	BOTTOM TRAWL	X	X	
	HERRING	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	OTHER SPECIES	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2011

1. Name of Vessel OSAKA REEFER Visual Identif. J A O N
 2. Flag (Call Sign)
 3. Type of Vessel CARGO/TRANSPORT 4. Length 131 M
 5. Gross Tonnage 3601 M.T. 6. Net Tonnage 2031 M.T. 7. Speed (knots) 20
 8. Owner's Name and Address TOKYO REEFER'S KANSHUKI KAISHA
18-4, TSUKIJI 6 CHOME CHUO-KU, TOKYO, 104, JAPAN
 9. Types of Processing Equipment

10. Fisheries for which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
NWA	LONG-FIN SQUID				X
	SHORT-FIN SQUID				X
	BUTTER FISH				X
	OTHER FISHES				X
CRB	TANNER CRAB				X
GOA	FLOUNDER				X
	PACIFIC OCEAN PERCH				X
	PACIFIC COD				X
	POLLOCK				X
	SQUID				X
	OTHER SPECIES				X
	OTHER ROCK FISHES				X
	ATKA MACKEREL				X
BSA	YELLOWFIN SOLE				X
	OTHER FLOUNDER				X

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2010

1. Name of Vessel KOJIMA MARU NO.5 Visual Identif. J M V K
 2. Flag (Call Sign)
 3. Type of Vessel PAIR TRAWLER 4. Length 56 M.
 5. Gross Tonnage 389 M.T. 6. Net Tonnage 151 M.T. 7. Speed (knots) 11.5 KT.
 8. Owner's Name and Address KAIYU SUISAN CO., LTD.
3-1-4, TAKASHIMA, OTARU-SHI, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	YELLOWFIN SOLE	BOTTOM TRAWL	X	X	
	OTHER FLOUNDER	BOTTOM TRAWL	X	X	
	SABLE FISH	BOTTOM TRAWL	X	X	
	HERRING	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	OTHER SPECIES	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

Attached Paper

JA-78-2011
JA-78-024

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	PACIFIC OCEAN PERCH				X
	HERRING				X
	PACIFIC COD				X
	SABLEFISH				X
	POLLOCK				X
	SQUID				X
	OTHER SPECIES				X
BSA	SHALL (HEATS)				X
SBL	SABLEFISH				X

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2012

1. Name of Vessel ETHYU MARU NO. 2 Visual Ident. J P Z H
 2. Fier (Call Sign) J P Z H
 3. Type of Vessel CARGO/TRANSPORT 4. Length 70 M
 5. Gross Tonnage 1044 M.T. 6. Net Tonnage 798 M.T. 7. Speed (knots) 12
 8. Owner's Name and Address ISSEI KAIUN YUEN KAISHA
9-11, YATZU & CHOME, YATZU, SHIZUOKA-KEN
 9. Types of Processing Equipment _____

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK				X
	PACIFIC COD				X
	YELLOWFIN SOLE				X
	SABLEFISH				X
	HERRING				X
	OTHER FLOUNDER				X
	SQUID				X
	OTHER SPECIES				X
	PACIFIC OCEAN PERCH				X
GOA	POLLOCK				X
	PACIFIC COD				X
	FLOUNDER				X
	PACIFIC OCEAN PERCH				X
	OTHER ROCKFISHES				X
	SQUID				X
	ATKA MACKEREL				X
	OTHER SPECIES				X
SBL	SABLEFISH				X

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0432

1. Name of Vessel KAIYO MARU NO. 8 Visual Ident. J P J K
 2. Fier (Call Sign) J P J K
 3. Type of Vessel LONGLINER/POT 4. Length 51.60 M
 5. Gross Tonnage 500 M.T. 6. Net Tonnage 253 M.T. 7. Speed (knots) 11.0 KT
 8. Owner's Name and Address KAIYO GYOGYO KANSHIKI KAISHA
1-1-18 MINATO-WACHI, ISHINOMAKI-SHI, MIYAGI-KEN, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SHELL STRIPPER, COOKER,
SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
C R B	TANNER CRAB	TRAPS (POTS)	X	X	
S N A	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-2013

1. Name of Vessel NISSHO MARU Visual Ident. JMTI
 2. Fier (Call Sign) JMTI
 3. Type of Vessel CARGO/TRANSPORT 4. Length 61 M
 5. Gross Tonnage 2,350 M.T. 6. Net Tonnage 1,359 M.T. 7. Speed (knots) 13
 8. Owner's Name and Address KITSUNA KAIUN CO., LTD.
1420-1, TSUJI, NHO-SHI, RHIME-KEN, 799-24, JAPAN
 9. Types of Processing Equipment _____

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
BSA	POLLOCK				X
	PACIFIC OCEAN PERCH				X
	SABLEFISH				X
	YELLOWFIN SOLE				X
	OTHER FLOUNDER				X
	PACIFIC COD				X
	OTHER SPECIES				X
	HERRING				X
	SQUID				X
GOA	POLLOCK				X
	PACIFIC COD				X
	FLOUNDER				X
	PACIFIC OCEAN PERCH				X
	OTHER ROCKFISHES				X
	OTHER SPECIES				X
	SQUID				X
	ATKA MACKEREL				X
CRB	TANNER CRAB				X
SBL	SABLEFISH				X

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0810

1. Name of Vessel SUE MARU NO. 11 Visual Ident. JGRB
 2. Fier (Call Sign) JGRB
 3. Type of Vessel LONGLINER/POT 4. Length 38 M
 5. Gross Tonnage 254 M.T. 6. Net Tonnage 133 M.T. 7. Speed (knots) 10
 8. Owner's Name and Address OSAKA GYOGYO KANSHIKI KAISHA
1-31, YAYOI-CHO, NEKURO-CITY, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0812

1. Name of Vessel: KOYO MARU NO. 3 Visual Identif. 2. Hierarchy (Call Sign): B L Y D
 3. Type of Vessel: LONGLINER / POT 4. Length: 43.10 M.
 5. Gross Tonnage: 299 M.T. 6. Net Tonnage: 150 M.T. 7. Speed (knots): 12.0 KT.
 8. Owner's Name and Address: HAKODATE KOKAI GYOGEI CO., LTD.
 17-19, OMACHI, HAKODATE, HOKKAIDO, JAPAN
 9. Types of Processing Equipment: FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
C R B	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0817

1. Name of Vessel: BIKYU MARU Visual Identif. 2. Hierarchy (Call Sign): 700A
 3. Type of Vessel: LONGLINER/POT 4. Length: 44.50 M.
 5. Gross Tonnage: 300 M.T. 6. Net Tonnage: 207 M.T. 7. Speed (knots): 11.0 KT.
 8. Owner's Name and Address: YAMAGATA-KEN SHISAN KOSHA CO., LTD.
 306-11, AZA-KAMO, OGA-KAZO, TSUBOYAMA-CITY, YAMAGATA-KEN, JAPAN
 9. Types of Processing Equipment: FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
C R B	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0815

1. Name of Vessel: KYOKA MARU NO. 7 Visual Identif. 2. Hierarchy (Call Sign): 7 L F H
 3. Type of Vessel: LONGLINER/POT 4. Length: 46.05 M.
 5. Gross Tonnage: 300 M.T. 6. Net Tonnage: 215 M.T. 7. Speed (knots): 10.0 KT.
 8. Owner's Name and Address: TOYAMA KEN KISEN SHIYOKU GYOGEI KYODOKUMAI
 185 YUKI, KUROBE-SHI, TOYAMA-KEN, JAPAN
 9. Types of Processing Equipment: FLASH FREEZER, SHELL STRIPPER, COOKER,
 SNAIL SHELL BREAKER, SEPARATOR, WASHER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
C R B	TANNER CRAB	TRAPS (POTS)	X	X	
S N A	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0819

1. Name of Vessel: HOKUTO MARU NO. 33 Visual Identif. 2. Hierarchy (Call Sign): JSP2
 3. Type of Vessel: LONGLINER/POT 4. Length: 42.50 M.
 5. Gross Tonnage: 274 M.T. 6. Net Tonnage: 137 M.T. 7. Speed (knots): 13.0 KT.
 8. Owner's Name and Address: HIPPON GODO KANETSU KAMISHIKI KAISHA
 2-2, KITOTIWA-CHO, NISHIO, HOKKAIDO, JAPAN
 9. Types of Processing Equipment: FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
C R B	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0820

1. Name of Vessel KIWA MARU No. 28 2. Visual Identif. 7JLJ
 3. Type of Vessel LONGLINER / POT 4. Length 48 M
 5. Gross Tonnage 467 M.T. 6. Net Tonnage 253 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address KISAKU NISHIJIMA
701, ASHIZAKI, NYUZEN-CHO, SUYONIKAWA-GUN, TOYAMA-KEN, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	
CRB	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0821

1. Name of Vessel MATSUEI MARU NO. 72 2. Visual Identif. JGPB
 3. Type of Vessel LONGLINER / POT 4. Length 43.60 M
 5. Gross Tonnage 300 MT 6. Net Tonnage 150 MT 7. Speed (knots) 10.5 KT
 8. Owner's Name and Address MATSUZAWA GYOGYO CO. LTD.
3-2, NARUNI-CHO, NEMURO, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
CRB	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0822

1. Name of Vessel BIKYU MARU No. 26 2. Visual Identif. 8 KPM
 3. Type of Vessel LONGLINER / POT 4. Length 48.40 M
 5. Gross Tonnage 299 MT 6. Net Tonnage 130 MT 7. Speed (knots) 12.7 KT
 8. Owner's Name and Address BIKYU GYOGYO KABUSHIKI KAISHA
92, NISHI, OCHIISHI, NEMURO, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
CRB	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0824

1. Name of Vessel AZUMA MARU NO. 32 2. Visual Identif. J D Z P
 3. Type of Vessel LONGLINER / POT 4. Length 43.00 M
 5. Gross Tonnage 324 M.T. 6. Net Tonnage 154 M.T. 7. Speed (knots) 12.0 KT
 8. Owner's Name and Address TAIYO GYOGYO KABUSHIKI KAISHA
1-5-1, MARUNOUCHI, CHIYODAI-KU, TOKYO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
CRB	TANNER CRAB	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0852

1. Name of Vessel TAISAN MARU NO.1 2. Visual Ident. Plier (Call Sign) JAXN
 3. Type of Vessel LONGLINER/POT 4. Length 55 M.
 5. Gross Tonnage 499 M.T. 6. Net Tonnage 261 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address KOKUSAI GYOGYO KABUSHIKI KAISHA
2-3-8, TRIFUNE, CHUO-KU, TOKYO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SHELL STRIPPER, COOKER
SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
CRB	TANNER CRAB	TRAPS (POTS)	X	X	
SNA	SNAILS	TRAPS (POTS)	X	X	
GOA					X
BSA					X

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0859

1. Name of Vessel MEIHO MARU NO.7 2. Visual Ident. Plier (Call Sign) 710U
 3. Type of Vessel LONGLINER/POT 4. Length 47 M.
 5. Gross Tonnage 350 M.T. 6. Net Tonnage 190 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address SHINICHI ITAKURA
12-13, TOMISAWACHO, YOICHIJO, YOTCHIGUN, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0856

1. Name of Vessel TAKASHIRO MARU NO.31 2. Visual Ident. Plier (Call Sign) JPTL
 3. Type of Vessel LONGLINER/POT 4. Length 49 M.
 5. Gross Tonnage 471 M.T. 6. Net Tonnage 269 M.T. 7. Speed (knots) 10.8
 8. Owner's Name and Address TAKASHIROMARU KAIUN CO., LTD.
719-5, GOKASHOURA, WANSEI-MACHI, WATARAI-GUN, MIE-KEN, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SHELL STRIPPER, COOKER
SNAIL SHELL BREAKER, SEPARATOR, WASHER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
CRB	TANNER CRAB	TRAPS (POTS)	X	X	
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0860

1. Name of Vessel WABINAKA MARU NO. 6B 2. Visual Ident. Plier (Call Sign) JDHO
 3. Type of Vessel LONGLINER/POT 4. Length 49 M.
 5. Gross Tonnage 414 M.T. 6. Net Tonnage 214 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address OSAKA GYOGYO KABUSHIKI KAISHA
1-31, YAYOI-CHO, NEMURO-CITY, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

NOTICES

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0862

1. Name of Vessel HOYO MARU NO. 1 2. Visual Identif. JPY
 3. Type of Vessel LONGLINER/POT 4. Length 29 M.
 5. Gross Tonnage 422 M.T. 6. Net Tonnage 222 M.T. 7. Speed (knots) 14
 8. Owner's Name and Address HOYOSUISAN KABUSHIKI KAISHA
1-2-17 SAKANA MACHI, KENKUNUMA-SHI, MIYAGI-KEN, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0872

1. Name of Vessel HAKKAI MARU No. 11 2. Visual Identif. JPAB
 3. Type of Vessel LONGLINER/POT 4. Length 41M.
 5. Gross Tonnage 235M. T. 6. Net Tonnage 124M. T. 7. Speed (knots) 11
 8. Owner's Name and Address KABUKI KAISHA NIGATYAKU SUISANKOHA
1-7, YAMAGISHIMACHO, NIGATA, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0877

1. Name of Vessel AZUMA MARU NO. 11 2. Visual Identif. JPPL
 3. Type of Vessel LONGLINER/POT 4. Length 40 M.
 5. Gross Tonnage 430 M.T. 6. Net Tonnage 220 M.T. 7. Speed (knots) 10
 8. Owner's Name and Address YAMASAN TSUBOSUISAN KABUSHIKI KAISHA
482, UTASHIMA, SHINAMAKIMURA, SHIMAMAKIGUN, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0873

1. Name of Vessel HIGO MARU 2. Visual Identif. JHPD
 3. Type of Vessel LONGLINER/POT 4. Length 34 M.
 5. Gross Tonnage 115 M.T. 6. Net Tonnage 47 M.T. 7. Speed (knots) 10.0
 8. Owner's Name and Address NIPPON SUISAN KAISHA, LTD.
6-2 OTEMACHI 2-CHOME, CHIYODAKU, TOKYO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, COOKER, SEPARATOR,
SNAIL SHELL BREAKER, WASHER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0874

1. Name of Vessel KOHOKU MARU NO. 7 2. Visual Identif. JIRU
 3. Type of Vessel LONGLINER/POT 4. Length 48 M.
 5. Gross Tonnage 347 M.T. 6. Net Tonnage 152 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address KOHOKU GYOKYO KAWACHI KAITA
B-45, MINAMITAMACHO, KUSHIRO, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0875

1. Name of Vessel KOTOYOSHI MARU NO. 21 2. Visual Identif. 7KJR
 3. Type of Vessel LONGLINER/POT 4. Length 27 M.
 5. Gross Tonnage 90 M.T. 6. Net Tonnage 47 M.T. 7. Speed (knots) 9.0
 8. Owner's Name and Address HOKUYO SUISAN CO., LTD.
7-9-13, TSUKIJI, CHUO-KU, TOKYO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, COOKER, SEPARATER,
SNAIL SHELL BREAKER, WASHER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0876

1. Name of Vessel MITO MARU No. 52 2. Visual Identif. JDFE
 3. Type of Vessel LONGLINER/POT 4. Length 43 M.
 5. Gross Tonnage 340 M.T. 6. Net Tonnage 162 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address YUJRO SASAKI
9-4, HAKITA-CHO, KUSHIRO-CITY, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. JA-78-0877

1. Name of Vessel RYOUN MARU NO. 2 2. Visual Identif. TJKE
 3. Type of Vessel LONGLINER/POT 4. Length 49 M.
 5. Gross Tonnage 1511 M.T. 6. Net Tonnage 236 M.T. 7. Speed (knots) 11
 8. Owner's Name and Address KATSUBURO TAKERAYASHI
7-3, HOKURAI-CHO, HAKODATE-CITY, HOKKAIDO, JAPAN
 9. Types of Processing Equipment FLASH FREEZER, SNAIL SHELL BREAKER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
SNA	SNAILS	TRAPS (POTS)	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

NOTICES

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMIT TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of the Republic of Korea hereby submits this application for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for specific species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1978.

Fishing Vessel Identification Forms will be submitted in support of this application. The fishery plans, species, and catch contemplated for vessels of the Korean flag are as follows:

Fishery Plans	Target Species	Total Tonnage Requested from Each Species
GOA	Processing & Transporting	

Submitted: January 23 1978
Date

Sam S. Kim
Signature of _____
Fishery Attaché, Embassy of the
Republic of Korea, Washington, D.C.
Title

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. KS-78-0079

1. Name of Vessel Rook Neung Visual Ident. BF 36130
2. Flag (Call Sign)
3. Type of Vessel Factory Ship (Processing) Length 130.00 M
4. Gross Tonnage 8,600.81G/T 5. Net Tonnage 5,983.65N/T 6. Maximum Speed (knots) 15.0 KTS
7. Owner's Name and Address Korea Marine Industry Development Corporation
#55-4, Seodomin-Dong, Chung-Ku, Seoul, Korea

8. Types of Processing Equipment Pilleteer, Fish Meal Plant

10. Fisheries for which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
GOA				X	X (Transport)

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☐ No ☒ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

No. KS-78-0042

1. Name of Vessel Soo Gong No. 51 Visual Ident. 6NEJ
2. Flag (Call Sign)
3. Type of Vessel Stern Trawler (Factory Ship) Length 101.80 M
4. Gross Tonnage 5,510.74G/T 5. Net Tonnage 2,762 N/T 6. Maximum Speed (knots) 15.0 KTS
7. Owner's Name and Address Korea Marine Industry Development Corporation
#55-4, Seodomin-Dong, Chung-Ku, Seoul, Korea
8. Types of Processing Equipment Fish Meal Plant, Minced Meat Plant,
Fish Oil Plant, Pilleteer, Flash Freezer.

10. Fisheries for which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Catching	Processing	Other Support
GOA				X	X (Transport)

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☐ No ☒ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

Book Neung and Soo Gong No. 51
(KS-78-0079) (KS-78-0042)

Material for Question No. 11:

Specific Activities requested: Purchase of raw fish from U.S. vessels for processing and shipment to Korea.

Flag of other vessels: U.S.

Fishery: GOA - Bottomfish fishery.

Species: Primary Pollock and incidental species including POP, Pacific cod, flounders, rockfish and other species.

Quantity: Project Target is 130,000 MT. Realizing that TALFF has been distributed there is only approximately 72,800 MT of fish available for U.S. fishermen, 36,400 MT is requested for each vessel.

Locations: Various locations within the U.S. Fishery Conservation Zone in the Gulf of Alaska.

Dates: April 1 - December 31, 1978 which will depend upon culmination of arrangements with U.S. fishermen.

[FR Doc. 78-3712 Filed 2-9-78; 8:45 am]

Registered
Federal

FRIDAY, FEBRUARY 10, 1978
PART V



DEPARTMENT
OF HEALTH,
EDUCATION, AND
WELFARE

Public Health Service



HEALTH MAINTENANCE
ORGANIZATIONS

Interim Regulations

[4110-84]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER J—HEALTH CARE DELIVERY SYSTEMS

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

Interim Regulations

AGENCY: Public Health Service, HEW.

ACTION: Interim Regulations.

SUMMARY: The program requirements set out in the interim regulations published on June 8, 1977, in the *FEDERAL REGISTER* (42 FR 29400-29416) have been amended by these regulations. The purpose is to expand and clarify the requirements of the existing regulations with respect to entities requesting Federal financial assistance for feasibility surveys, planning and initial development, and initial operating costs of health maintenance organizations. Federal financial assistance for grant and loan support for the development and initial operating costs of health maintenance organizations is authorized under Title XIII of the Public Health Service Act, "Health Maintenance Organizations" (42 U.S.C. 300e et seq.), as amended by the Health Maintenance Organization Amendments of 1976 (Pub. L. 94-460).

EFFECTIVE DATE: February 10, 1978. Comments are due on or before April 11, 1978.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the amended Subpart C—Grants for Feasibility Surveys, Subpart D—Grants and Loan Guarantees for Planning and for Initial Development Costs, and Subpart E—Loans and Loan Guarantees for Initial Operating Costs, to the Director, Division of Health Maintenance Organizations Development, Office of the Assistant Secretary for Health, Room 12-05, 5600 Fishers Lane Rockville, Md. 20857. All comments timely received will be considered and will be available for public inspection at the above address during regular business hours. Following the close of the comment period, these regulations will be revised as warranted by the public comments received.

FOR FURTHER INFORMATION CONTACT:

Frank H. Seubold, Ph. D., Director, Division of Health Maintenance Organizations Development, 5600 Fishers Lane, Parklawn Building, Room 12-05, Rockville, Md. 20857, 301-443-4106.

SUPPLEMENTARY INFORMATION: The Health Maintenance Organization

Act of 1973, Pub. L. 93-222, was approved on December 29, 1973, and amended the Public Health Service Act to provide assistance and encouragement for the establishment and expansion of health maintenance organizations (HMOs). Final rules with respect to the HMO Act were published in the *FEDERAL REGISTER* on October 18, 1974. These rules set forth requirements for applicants requesting Federal financial assistance for the development and initial operation of HMOs. The Health Maintenance Organization Amendments of 1976, Pub. L. 94-460, became law on October 8, 1976, and extended the present Federal financial assistance program as follows:

1. Grants for feasibility surveys through September 30, 1978.
2. Grants and loan guarantees for planning projects through September 30, 1978.
3. Grants and loan guarantees for initial development projects through September 30, 1979.
4. Loans and loan guarantees for initial operating costs through September 30, 1980.

After the Health Maintenance Organization Amendments of 1976 became law, there was a need to revise the October 18, 1974, regulations as soon as possible, since the new law moderated certain restrictive provisions of the original Act. Accordingly, interim regulations were published on June 8, 1977. Since there was an urgency to issue these interim regulations, only minimal revisions necessary to eliminate conflicts with the new law were made in order to allow the activities of the health maintenance organization program to be administered under the authority of the 1976 amendments. In the preamble to the June 8 regulations, the Department stated that it intended to issue a notice of proposed rulemaking which would have proposed to revise those regulations and implement all of the provisions of the new law; however, it has been determined upon reconsideration that the Subparts C, D, and E set forth below could be issued without notice of proposed rulemaking since the changes made are largely administrative and technical and not substantive in nature.

Notice of proposed rulemaking has been omitted in the issuance of these regulations as impractical and contrary to the public interest. Subparts C, D, and E of the regulations are needed as soon as possible so applicants can meet statutory deadlines providing that initial development projects can be funded only through fiscal year 1979. If applicants are to meet this schedule, feasibility studies must be completed early in fiscal year 1978 and planning applications must be funded prior to fiscal year 1979. To submit these amendments to public

participation in rulemaking before making them effective would necessarily result in excessive delays in meeting this schedule.

In addition to revisions required by the Health Maintenance Organization Amendments of 1976, revisions have also been made as a result of 3 years of program experience in reviewing and evaluating over 500 applications requesting Federal financial assistance under Title XIII. Administrative and technical changes have been made by refining and clarifying certain tasks required of applicants in conducting feasibility surveys, and in carrying out planning and initial development projects. Appropriate revisions have been made in the respective evaluation and award sections to conform with the changes in the project element sections of the regulations.

Attention is called to the following revisions:

1. Section 110.403(f)(5). The program requirements for developing a sound marketing plan in the planning phase of the project have been defined and clarified. A study conducted by the Division of Health Maintenance Organizations noted marketing deficiencies as the major cause for denial or delay in determination of qualification in over 90 percent of the applications studied.

2. Section 110.407(b) Length and maturity of loans; Section 110.505 Reserve requirement; Section 110.508(b) Length and maturity of loans.

The length and maturity of loans and the accumulation period for reserve requirements have been adjusted to conform with the statute, which added two years to the period for which the loan or loan guarantee assistance monies may be used. Accordingly, the allowable loan repayment period and the deadline for accumulating the restricted reserve have also been extended for two years.

3. Sections 110.405 (a)(2), (b)(3) and 110.503(b)(2). In order to be eligible for loan guarantees, private (other than nonprofit private) health maintenance organizations must serve or propose to serve medically underserved areas. To assure that health maintenance organizations receiving loan guarantees provide a significant level of service to such areas, the Department has amended §§ 110.405 (a)(2), (b)(3) and 110.503(b)(2) to set a 10 percent level as the requirement for eligibility for loan guarantees for private (other than nonprofit private) health maintenance organizations.

4. Section 110.507. The provision was added limiting the aggregate amount of principal of loans made or guaranteed under section 1305 of the Act for a health maintenance organization to an amount not to exceed \$2,500,000. This is a statutory requirement and

was inadvertently omitted from the existing interim regulations.

5. Delete former §110.507(b). Program experience in making over 30 loans since December 1974 has proven the impracticability of the provision which limits loans and loan guarantees to two-thirds of the Secretary's projection of the amount by which operating costs during a period not to exceed the first 60 months of operation exceed revenues for such period. Health maintenance organizations' applications approved for loan or loan guarantee assistance to date, with only one exception, have requested and received a waiver of the two-thirds limitation requirement. These waivers were based on evidence that they could not obtain one-third of the projected loan needs from private sources. Since this provision is not a statutory requirement, it was deleted from the regulations.

6. The last sentence in §110.407(c), relating to loan guarantees for planning and initial development assistance, had provided that "Principal repayment during the first 36-months of operation may be deferred, with payment of interest only by the applicant during such period." The 36 month deferral period has been deleted to make clear that a deferral of payment for 36 months of operation was not mandatory, inasmuch as this provision allowed for deferral of principal repayments during the first 36 months of operation in addition to the planning and initial development periods. It is felt that the financial interest of the Government would best be served by the Secretary negotiating a deferral period with each applicant.

7. In §§110.303(h) and 110.403(b), the requirement that the applicant shall assure cooperation was expanded to include both the appropriate health systems agency and the State health planning and development agency. Pub. L. 93-641, approved on January 4, 1975, amended the Act to make health maintenance organizations subject to State certificate of need programs (administered by State health planning and development agencies) under Section 1523(a)(4)(B) of the Act. Accordingly, applicants for feasibility and planning projects are now required to show evidence of their cooperation with both agencies.

8. The establishment of the individual practice association has been added as §110.403(f)(12) as an essential planning activity for proposed health maintenance organizations planning to provide services through an individual practice association. Over three years of developmental assistance activity have been demonstrated that the actual establishment of an individual practice association is essential to facilitate transition into operational status.

The following is a status report on other provisions of the health maintenance organizations regulations under Part 110:

Regulations	Status
Subpart A—Requirements for a Health Maintenance Organization.	To be reorganized and new definitions to be added—to be issued as a notice of proposed rulemaking.
Subpart B—Federal Financial Assistance: General.	Health systems agency review criteria to be revised and procedures to be added—to be issued as a notice of proposed rulemaking.
Subpart F—Qualification of Health Maintenance Organizations.	Revisions of §110.605 are being considered with respect to evaluation and determination of qualification.
Subpart G—Restrictive State Laws and Practices.	No changes under consideration.
Subpart H—Employees' Health Benefits Plans.	To be revised to conform with amended law—to be issued as a notice of proposed rulemaking.
Subpart I—Continued Regulation of Health Maintenance Organizations and Other Entities and.	Published as a notice of proposed rulemaking in the FEDERAL REGISTER (41 FR 40292-40295) on September 17, 1976.
Subpart J—Reconsiderations and Hearings.	To be revised to conform with amended law—to be reissued as a notice of proposed rulemaking.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby amends the following Subparts of 42 CFR Part 110 as follows: Subpart C—Grants for Feasibility Surveys; Subpart D—Grants and Loan Guarantees for Planning and for Initial Development Costs; and Subpart E—Loans and Loan Guarantees for Initial Operating Cost.

NOTE.—The Department of Health, Education, and Welfare, has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: October 4, 1977.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: February 2, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart C—Grants for Feasibility Surveys

- Sec.
- 110.301 Applicability.
 - 110.302 Eligibility.
 - 110.303 Project elements.
 - 110.304 Evaluation and award.
 - 110.305 Funding duration and limitation.

Subpart D—Grants and Loan Guarantees for Planning and for Initial Development Costs

- 110.401 Applicability.
- 110.402 Eligibility.
- 110.403 Project elements for planning.
- 110.404 Project elements for initial development.
- 110.405 Funding duration and limitation.
- 110.406 Evaluation and award.
- 110.407 Loan provisions.

Subpart E—Loans and Loan Guarantees for Initial Operating Costs

- 110.501 Applicability.
- 110.502 Definitions.
- 110.503 Eligibility.
- 110.504 Project elements.
- 110.505 Reserve requirements.
- 110.506 Evaluation and award.
- 110.507 Funding duration and limitation.
- 110.508 Loan provisions.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301-1316, as amended, 90 Stat. 1945-1960 (42 U.S.C. 300e-300e-15).

Subpart C—Grants for Feasibility Surveys

§110.301 Applicability.

The regulations of this subpart, in addition to the regulations of Subpart B of this part, are applicable to grants awarded pursuant to section 1303 of the Act for projects to conduct surveys or other activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations.

§110.302 Eligibility.

(a) *Eligible applicants.* Any public or private nonprofit entity which is or proposes to develop or become a health maintenance organization is eligible to apply for an award under this subpart, except that in the case of applications for support of expansion, only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply.

(b) *Eligible projects.* Awards may be made pursuant to section 1303 of the Act, the regulations of Subpart B of this part, and this subpart, to eligible applicants to assist in conducting surveys or other activities to determine the feasibility of developing or expanding the operation of organizations which meet or propose to meet the requirements under subpart A of these regulations.

§110.303 Project elements.

An approvable application must provide:

(a) Statements which describe concisely:

(1) The goals and objectives of the applicant organization and of the proposed health maintenance organization if the proposed health maintenance organization is different from the applicant organization; if it is different, describe the relationship between the two organizations;

(2) The administrative, managerial, and organizational arrangements;

(3) The resources to be used, including consultants whose tasks must be defined adequately to permit an evaluation of the need for such consultants;

(4) The existing or proposed composition of the Board of Directors of the applicant organization and its duties;

(5) The proposed service area and the surrounding community, the number of employed persons and number of primary care physicians located in the proposed service area; and

(6) Intended financial participation of the applicant, specifying the type of contribution, such as cash or services, loan of full- or part-time staff, equipment, space, materials, or other contributions.

(b) In the case of a proposed staff or medical group health maintenance organization, letters from at least three physicians expressing their interest in the health maintenance organization feasibility study in connection with their eventual participation in the health maintenance organization as providers of basic health services.

(c) In the case of a proposed individual practice association health maintenance organization, letters from the local medical society or societies, or from at least three individual physicians, expressing their interest in the health maintenance organization feasibility study in connection with their eventual participation in the health maintenance organization as providers of basic health services.

(d) Evidence that there is interest in the possible development of a health maintenance organization from one or more employers, or unions, or community leaders in the proposed service area.

(e) Plans for conducting the feasibility study which must include a consolidated time-phased milestone chart indicating proposed funding and manpower to be allocated to each of the six activities below, and a narrative explanation of work plans to accomplish the six activities:

(1) Identification of pertinent State laws, regulations, and practices relating to the intended organizational structure and operation as a health maintenance organization;

(2) Identification of major groups or other potential sources of enrollment to which marketing efforts will be directed, including their existing health plan benefits and payments and the level and scope of major health plan benefits and premiums in the community;

(3) Identification of potential providers and available health manpower necessary to provide basic health services to the number of enrollees projected to be served, and provision of evidence of their willingness to participate in the proposed health maintenance organization;

(4) Development of detailed estimates of expected utilization and the

amount to be charged for basic health services when the proposed health maintenance organization becomes operational;

(5) Development of detailed estimates of the enrollment and funds required to reach the financial break-even point. These estimates must take into account all potential sources of income; and

(6) Development of preliminary estimates of the type and number of facilities, if any, necessary to provide health services when the health maintenance organization becomes operational.

(f) In addition, in the case of an operational prepaid health plan which proposes to become a qualified health maintenance organization, an identification of gaps between its current operation and the requirements of subpart A of this Part.

(g) In addition, in the case of a qualified health maintenance organization requesting assistance for significant expansion:

(1) Data on prepaid membership totals for annual intervals over the past five years, or if the health maintenance organizations has not been operating for five years, such data on a quarterly basis for the time during which it has been in operation;

(2) A description of the current health service delivery facilities, including an estimate of their capacity;

(3) The number and specialties of current health professionals serving its members; and

(4) The plans for the proposed significant expansion which demonstrate that the definition of significant expansion in § 110.202(c) will be met.

(h) An assurance that the applicant will cooperate with the appropriate health systems agency and State health planning and development agency; and

(i) Written evidence of notification to the local medical society or societies of the applicant's intention to apply for assistance.

§ 110.304 Evaluation and award.

(a) Within the limits of funds available for such purpose, the Secretary may make awards to cover up to 90 percent of the cost of projects, or in the case of projects which will draw not less than 30 percent, not more than the appropriate percentage (as determined under § 110.108(c)), of their anticipated enrollment from medically underserved populations, up to 100 percent of the costs, to those applicants whose projects will, in his judgment, best promote the purposes of section 1303 of the Act and the regulations of this subpart, taking into account:

(1) The appropriateness and completeness with which the applicant addresses the project elements set forth above;

(2) The comments of the appropriate health systems agency or State health planning and development agency;

(3) The degree to which the goals and objectives of the proposed project will promote the purposes of the Act and are consistent with the generally recognized capability of effectively organized and managed health maintenance organizations to reduce inappropriate hospital utilization, to contain health care costs, to use effectively medical and other health manpower, to emphasize early detection and treatment of illness, and to contribute to a better distribution and quality of health care;

(4) Satisfactory evidence of understanding and commitment to the development of a qualified health maintenance organization on the part of the sponsors and the board of directors of the proposed project;

(5) The qualifications of the project director or proposed project director or other person responsible for completion of the feasibility study and a position description adequate to assure that a well-qualified person has been or will be selected;

(6) The thoroughness of the milestone chart and narrative plan for conducting the feasibility study by project staff and any proposed consultants;

(7) The indications of interest obtained from physicians with respect to their eventual participation as providers of basic health services;

(8) The probability of financial viability based on potential sources of financial support for development and operations, on potential sources of enrollment, and on the effect of competing health insurance plans;

(9) The inclusion of medically underserved populations in the projected enrollment;

(10) The location and the number of prepaid health plans already providing health services to a defined population in the applicant's proposed service area and to the extent known the number of organizations already studying health maintenance organization development in the proposed service area;

(11) The level of the applicant's intended contribution to the project;

(12) In the case of an existing prepaid health plan, the potential to become a qualified health maintenance organization;

(13) In the case of expansion projects, the potential rate of increase of expansion, or the potential increase in the area to be served by the expanded health maintenance organization.

(b) In considering applications under this subpart, the Secretary will give priority to applications which contain assurances satisfactory to the Secretary that when the organizations

become operational not less than 30 percent of their members will be members of a medically underserved population.

§ 110.305 Funding duration and limitation.

(a) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for project costs: *Provided, however,* That any single grant may not exceed \$75,000.

(b) Feasibility survey applicants may propose that the award period be 12 months or less. Feasibility survey projects shall be completed within the period of the award. The Secretary may make not more than one additional grant for a project for a feasibility survey for which a grant has previously been made, and may permit additional time (up to 12 months) for completion of the project if he determines that the additional grant or additional time, or both, is needed to complete the project adequately.

(c) Funds under grants for feasibility surveys shall be used only for activities set forth in § 110.303(e) and for activities designed to fill the gaps referred to in § 110.303(f).

Subpart D—Grants and Loan Guarantees for Planning and Initial Development Costs

§ 110.401 Applicability.

The regulations of this subpart, in addition to the regulations to Subpart B of this part, are applicable to:

(a) Grants awarded pursuant to section 1304 of the Act for projects for planning, and initial development of health maintenance organizations or for significant expansion, as defined in § 110.202(c), of the membership of, or areas served, by qualified health maintenance organizations, and

(b) Guarantees made to non-Federal lenders of payment of the principal of and the interest on loans made to—

(1) Nonprofit private entities for such projects for the establishment or expansion of health maintenance organizations, or

(2) Private entities (other than nonprofit private entities) for such projects for health maintenance organizations which will serve medically underserved populations.

§ 110.402 Eligibility.

(a) *Eligible applicants.* (1) Any public entity which is or which proposes to become a health maintenance organization is eligible to apply for a grant under this subpart, except that in the case of applications for support of expansion, only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply.

(2) Any nonprofit private entity which is or which proposes to become

a health maintenance organization is eligible to apply for a grant or a loan guarantee under this subpart, except that in the case of applications for support of expansion, only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply.

(3) Any private entity (other than a nonprofit private entity) which is or which proposes to become a health maintenance organization and which proposes to serve a medically underserved population is eligible to apply for a loan guarantee under this subpart, except that in the case of applications for support of expansion, only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply.

(b) *Eligible projects.*—(1) *Grants.* Awards of grants may be made pursuant to section 1304 of the Act and the regulations of Subpart B of this part and this subpart to eligible applicants for planning for the establishment of health maintenance organizations, or for the significant expansion of the membership of, or areas served by the health maintenance organizations meeting the requirements of Subpart A of this part, or for the initial development or significant expansion of such organizations;

(2) *Loan guarantees.* (i) In the case of nonprofit private entities, guarantees may be made pursuant to section 1304 of the Act and the regulations of Subpart B of this part and this subpart to eligible applicants for the payment of the principal of and the interest on loans for planning projects for the establishment of health maintenance organizations, or the significant expansion of existing organizations which have been found by the Secretary to meet the applicable requirements of Title XIII of the Act and the applicable regulations of this part, or for the initial development or significant expansion of such health maintenance organizations.

(ii) In the case of private entities (other than nonprofit private entities), guarantees may be made pursuant to section 1304 of the Act and the regulations of Subpart B of this part and this subpart to eligible applicants for the payment of the principal of and the interest on loans for planning projects for the establishment of health maintenance organizations, or the significant expansion of existing organizations which have been found by the Secretary to meet the applicable requirements of Title XIII of the Act and the applicable regulations of this part, or for the initial development or significant expansion of such health maintenance organizations: *Provided,* That at least 30 percent of the project members of such organizations are

from medically underserved populations.

§ 110.403 Project elements for planning.

An approvable application must provide:

(a) Statements which describe in detail:

(1) The goals and objectives of the proposed health maintenance organization;

(2) The administrative, managerial, and organizational arrangements;

(3) The resources to be used including consultants whose tasks must be defined adequately to permit an evaluation of the need for such consultants;

(4) The existing or proposed composition of the Board of Directors of the applicant organization and its duties;

(5) The proposed service area and the surrounding community, the number of employed persons and number of primary care physicians located in the proposed service area; and

(6) The intended financial participation of the applicant, specifying the type of contribution such as cash or services, loans of full- or part-time staff, equipment, space, materials, facilities, or other contributions.

(b) An assurance that the applicant will cooperate with the appropriate health systems agency and State health planning and development agency.

(c) Written evidence of notification to the local medical society or societies of the applicant's intention to apply for assistance.

(d) Evidence that there is support for the project by organizations, or institutions, or employer groups which may participate in the development of the proposed health maintenance organization.

(e) A detailed report of the results of the activities performed during the feasibility survey or study which established the feasibility of developing the health maintenance organization, as well as of any other activities relating to the development of the health maintenance organization undertaken prior to application for planning assistance. With regard to the report of the feasibility survey, information on the following must be included:

(1) Status of the applicant in terms of pertinent State laws, regulations, and practices relating to operating as a health maintenance organization;

(2) Organizational structure of the proposed health maintenance organization;

(3) The types of population groups which would be sources of prepayment for an operational health maintenance organization and other potential sources of payment for services when operational;

(4) Providers of basic health services who have agreed or might reasonably be expected to agree to provide health benefits;

(5) Sources of payment and operational support including:

(i) Preliminary estimate of the amount to be charged for basic health benefits when the proposed health maintenance organization becomes operational; and

(ii) Estimate of enrollment and income required to reach the financial breakeven point; and

(6) A preliminary estimate of facilities required for operational status.

(f) Concise plans for accomplishing planning stage activities, which must include at a minimum, a description of tasks for each activity listed below, accompanied by a time-phased milestone chart indicating proposed funding and manpower to be allocated to each such activity (where circumstances indicate that it would be appropriate and consistent with the intent of the Act, additional activities may be proposed):

(1) Recruitment of key project staff which shall include the employment of a full-time project director;

(2) Planning for, and when appropriate, initiation of action relating to compliance with all applicable State requirements, including State certificate of need programs, and with section 1513(e) of the Public Health Service Act;

(3) Development of formal organization;

(4) Establishment and documentation of community support;

(5) Development of a marketing plan which must include the following:

(i) Market assessment:

(A) Precise description of the service area;

(B) Information about prospects for enrollment of groups, including analysis of competing health benefits plans;

(C) Evidence of a willingness on the part of key prospects to offer the health maintenance organization when operational;

(D) An estimate of market potential for a five year period, including a five year enrollment projection.

(ii) Marketing strategy:

(A) Select the major prospects for enrollment;

(B) Develop alternatives to meet the enrollment projections;

(C) Estimate the level and type of marketing effort required to meet the enrollment projection;

(D) Develop a marketing effort and a detailed budget including staffing requirements.

(iii) Marketing materials:

(A) Develop detailed description of specifications for marketing and enrollment literature;

(B) Develop prototype membership materials including membership cards, subscriber agreements, handbooks and certificates, health questionnaires, etc.

(6) Definition of the health services and options, if any to be offered;

(7) Identification of providers of basic health services needed to provide

those services to the projected enrollment, and drafting of proposed agreements to negotiate with these providers;

(8) Planning for necessary facilities and equipment and their financing;

(9) Development of premium structure;

(10) Development of budget and financial plan, including alternative plans if enrollment varies significantly from projections;

(11) Obtaining of required health systems agency or agencies and State health planning and development agency determinations; and

(12) Establishment of the individual practice association entity if appropriate to the intended organizational structure when operational as a health maintenance organization.

(g) In addition, in the case of an operational prepaid health plan which proposes to become a qualified health maintenance organization, an identification of gaps between its current operation and the requirements of Subpart A of this part.

(h) In addition, in the case of a qualified health maintenance organization requesting assistance for significant expansion:

(1) Data on prepaid membership totals for annual intervals over the past five years, or if the health maintenance organization has not been operating for five years, such data on a quarterly basis for the time during which it has been in operation;

(2) A description of the current health service delivery facilities, including an estimate of their capacity;

(3) The number and specialties of current health professionals serving its members; and

(4) The plans for the proposed significant expansion which demonstrate that the definition of significant expansion in § 110.202(c) will be met.

§ 110.404 Project elements for initial development.

An approvable application must provide:

(a) Written evidence satisfactory to the Secretary that the feasibility of the establishment and operation or expansion has been established by the applicant and that sufficient planning for the establishment or expansion has been conducted by the applicant. In addition, applicants must provide the information, assurances and evidence required by § 110.403 (a), (b), (c), (d), and (e), and must report all other activities relating to the development of the health maintenance organization undertaken prior to application for initial development assistance.

(b) Detailed plans, which must include, at a minimum, tasks designed to accomplish the activities listed below, accompanied by a time-phased milestone chart indicating proposed fund-

ing and manpower to be allocated to each (where circumstances indicate that it would be appropriate and consistent with the intent of the Act, additional activities may be proposed in the application):

(1) Development of a schedule to meet the requirements of Subpart A of this part;

(2) Completion of activities related to resolution of legal issues;

(3) Recruitment and training of personnel essential for operation as a health maintenance organization;

(4) Development of a comprehensive financial plan;

(5) Organization of physician health services;

(6) Organization of other basic health services;

(7) Development of a schedule to construct, lease, renovate or otherwise obtain health maintenance organization facilities;

(8) Organization of ambulatory care facility;

(9) Implementation of a staffing plan that demonstrates compliance with the appropriate 15 or 30 percent limitation on contracts for basic and supplemental health services (see § 110.104(a)), and formalization of contract arrangements;

(10) Further refinement of the projected market to be served by obtaining specific evidence of employer or union willingness to offer the health maintenance organization option on specific dates;

(11) Initiation of enrollment plan; and

(12) Establishment of any working capital or reserves or both as may be required by State authorities.

(c) Evidence from physicians and from one or more hospitals indicating that they intend to become providers of basic health services for the proposed health maintenance organization:

(1) In the case of an individual practice association-type health maintenance organization, there must be such evidence from a number of physicians adequate to serve the proposed enrollment; and

(2) In the case of a non-individual practice association-type health maintenance organization, there must be such evidence from at least three physicians, indicating that they are willing to be employed by or to contract with the proposed health maintenance organization.

(d) In the case of an applicant which intends to serve Title XIX eligibles or Title XVIII beneficiaries as a part of the planned enrollment, as appropriate:

(1) Evidence that the State Title XIX agency is willing to negotiate a prepaid capitation contract in the form of a letter or other document from the State Title XIX agency; or

(2) Evidence that the applicant is planning to or has entered into a contract under Title XVIII as a health maintenance organization.

(e) In addition, in the case of an operational prepaid health plan which proposes to become a qualified health maintenance organization, an identification of gaps between its current operation and the requirements of Subpart A of this part.

(f) In addition, in the case of qualified health maintenance organizations requesting assistance for significant expansion:

(1) Data on prepaid membership totals for annual intervals over the past five years, or if the health maintenance organization has not been operating for five years, such data on a quarterly basis for the time during which it has been in operation;

(2) A description of the current health service delivery facilities, including an estimate of their capacity;

(3) The number and specialties of current health professionals serving its members; and

(4) The plans for the proposed significant expansion which demonstrate that the definition of significant expansion in § 110.202(c) will be met.

§ 110.405 Funding duration and limitation.

(a) *Planning projects.* (1) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for project costs: *Provided*, That any single grant and the amount of principal of any single loan guaranteed under section 1304 of the Act may not exceed \$200,000.

(2) In considering applications for grants for planning projects under this subpart, the Secretary will give priority to applications which contain assurances satisfactory to the Secretary that when the organization becomes operational, not less than 30 percent of its members will be members of a medically underserved population. In considering applications for loan guarantees for planning projects under this subpart, the Secretary will give special consideration to applications for projects for health maintenance organizations which will have at least 10 percent of their projected membership from medically underserved populations. Applicants may propose that the award period be for one year or less, as appropriate to the planning activities to be accomplished. Planning projects shall be completed within the period of the award. The Secretary may not make more than one additional grant or loan guarantee for a planning project for which a grant or loan guarantee has previously been made, and may permit additional time (up to 12 months) for completion of the project if he determines that

the additional grant or loan guarantee (as the case may be) or additional time, or both, is needed to complete the project adequately.

(3) Funds under grants and loans guaranteed for planning projects shall be used only for the activities set forth in § 110.403(f) and for activities required to fill the gaps referred to in § 110.403(g).

(b) *Initial development projects.* (1) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sums necessary for project costs: *Provided, however*, That the aggregate amount of loan guarantees and grants for any initial development project may not exceed \$1,000,000 or, in the case of a project for a health maintenance organization which will provide services to an additional service area or which will provide services in two or more areas which are not contiguous \$1,600,000.

(2) Applicants may propose that the award period for initial development activities be one year or less, as appropriate to the initial development activities to be accomplished. Initial development projects shall be completed within the period of the award beginning on the first day of the month in which such award was made, and the number of grants made for any initial development project under section 1304 of the Act may not exceed a total of three. A loan guarantee for an initial development project may only be made for a loan (or loans) for initial development costs incurred in a period not to exceed three years.

(3) In considering applications for grants for initial development projects under this subpart, the Secretary will give priority to applications which contain assurances satisfactory to the Secretary that when the organization becomes operational, not less than 30 percent of its members will be members of a medically underserved population. In considering applications for loan guarantees for initial development projects under this subpart, the Secretary will give special consideration to applications for projects for health maintenance organizations which will have at least 10 percent of their projected membership from medically underserved populations.

(4) Funds under grants and loans guaranteed for projects for initial development shall be used only for activities set forth in § 110.104(b) (except that such funds may not be used for the costs of construction or for recruitment of personnel who will not engage in practice principally for the health maintenance organization) and for activities required to fill gaps referred to in § 110.404(e).

§ 110.406 Evaluation and award.

(a) Within the limits of funds available for such purpose, the Secretary

may make awards to cover up to 90 percent of the cost of projects, or in the case of projects which will draw not less than 30 percent nor more than the appropriate percentage (as determined under § 110.108(c)) of its anticipated enrollment from medically underserved populations, up to 100 percent of the costs, to those applicants whose projects will, in his judgment, best promote the purposes of section 1304 of the Act and the regulations of this subpart, taking into account:

(1) The degree to which the proposed project satisfactorily provides for the elements set forth in § 110.403 or § 110.404.

(2) The comments of the appropriate health systems agency or State health planning and development agency.

(3) Whether the feasibility of the project has been established, and in the case of initial development applications, whether all required planning activities have been accomplished.

(4) The appropriateness of the goals and objectives of the proposed project.

(5) The effectiveness the proposed organization may reasonably be expected to have in reducing inappropriate hospital utilization,* containing health care costs, using medical and other health manpower, emphasizing early detection and treatment of illnesses, and achieving a better distribution and quality of care.

(6) The capability of the applicant to organize and manage the project successfully.

(7) Evidence of the applicant's intended contribution to the project.

(8) Evidence by letters or similar statements of intent from providers expressing a willingness to be employed by or contract with the proposed health maintenance organization for the provision of basic health services and evidence that providers as necessary, will contract with the health maintenance organization other than as members of its staff or through medical groups or individual practice associations.

(9) Evidence, in form of letters, from individuals, groups, or organizations indicating that they support the development and operation of the proposed health maintenance organization.

(10) The results of the Secretary's assessment of marketing capability and the prospects for eventual financial viability as an operational health maintenance organization without continued Federal support.

(11) The inclusion of medically underserved populations in groups to be enrolled.

(12) Location relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the area.

(13) The percentage of anticipated total enrollment to be drawn from nonmetropolitan areas to be served.

(14) In the case of an existing organization operating on a prepaid capitation basis, the applicant's potential for expeditious transition into a qualified health maintenance organization.

(15) In the case of expansion projects, the potential rate of increase of expansion, or the potential increase in the area to be served by the expanded health maintenance organization.

(b) In considering applications under this subpart the Secretary will give priority to applications which contain assurances satisfactory to the Secretary that when the organizations become operational, not less than 30 percent of their members will be members of a medically underserved population.

§ 110.407 Loan guarantee provisions.

(a) *Disbursement of loan proceeds.* The principal amount of any loan guaranteed by the Secretary under this subpart shall be disbursed to the applicant in accordance with an agreement to be entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable over a period of 22 years, beginning on the date of endorsement of the loan guarantee by the Secretary. The Secretary may however, approve a shorter repayment period where he determines that a repayment period of less than 22 years is more appropriate to an applicant's total financial plan.

(c) *Repayment.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest, to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan. Principal repayment may be deferred, with payment of interest only by the applicant during a period to be specified in an agreement between the applicant and the Secretary.

Subpart E—Loans and Loan Guarantees for Initial Operating Costs

§ 110.501 Applicability.

The regulations of this subpart, in addition to the regulations of Subpart B, of this part are applicable to loans

and loan guarantees awarded pursuant to section 1305 of the Act.

§ 110.502 Definitions.

(a) "Operating cost" means any cost which under generally accepted accounting principles or under accounting practices prescribed or permitted by State regulatory authority is not a capital cost and which is incurred on or after the first day of the applicable period of operation or expansion as defined in paragraph (b) of this section: *Provided*, That payments made by a health maintenance organization during such applicable period to reduce balance sheet liabilities existing at the beginning of such period are operating costs to the extent that they are expressly approved by the Secretary at the time the loan or loan guarantee is made. In addition, when deposits of funds to restricted reserve accounts are required by State authority, deposits made during such applicable period are operating costs.

(b) "First 60 months of operation or expansion" means the 60-month period beginning on the first day of the month during which the health maintenance organization first provides services to members, or in the case of significant expansion, first provides services in accordance with its expansion plan.

§ 110.503 Eligibility.

(a) *Eligible applicants.* (1) Any public qualified health maintenance organization is eligible to apply for a loan under this subpart.

(2) Any nonprofit private qualified health maintenance organization is eligible to apply for a loan or a loan guarantee under this subpart.

(3) Any private (other than a nonprofit private) qualified health maintenance organization which will serve a medically underserved population is eligible to apply for a loan guarantee under this subpart.

(b) *Eligible projects.*—(1) *Loans.* In the case of public or nonprofit private qualified health maintenance organizations, loans may be made pursuant to section 1305 of the Act and the regulations of Subpart B of this part and this subpart to eligible applicants to assist them in meeting the amount by which their operating costs during a period not to exceed the first 60 months of their operation exceed their revenues in such period, or in meeting the amount by which their operating costs, which the Secretary determines are attributable to significant expansion in their membership or area served, as defined in § 110.202(c), and which are incurred during a period not to exceed the first 60 months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion.

(2) *Loan guarantees.* Loan guarantees may be made pursuant to section 1305 of the Act, and the regulations of Subpart B of this part and this subpart to guarantee to non-Federal lenders payment of the principal of and the interest on loans made to any nonprofit private qualified health maintenance organization or any private (other than a nonprofit private) qualified health maintenance organization for the amounts referred to in paragraph (b)(1) of this section: *Provided*, That at least 10 percent of the projected members of any such private (other than nonprofit private) qualified health maintenance organization are from a medically underserved population.

§ 110.504 Project elements.

An approvable application must provide:

(a) Statements which describe in detail:

(1) The applicant's adequate accomplishment of feasibility survey, planning, and development activities; and

(2) The health maintenance organization's management capability.

(b) Detailed information on the health maintenance organization's marketing plan and enrollment forecasts and experience.

(c) A detailed narrative statement describing:

(1) All existing and planned provider arrangements including copies of all executed contracts; and

(2) All facilities to be used in the delivery of health services.

(d) Financial information in such detail as the Secretary may prescribe.

(e) Evidence that any certificate of need required under State law for the operation of the health maintenance organization has been obtained by the applicant.

§ 110.505 Reserve requirement.

The applicant receiving a loan or loan guarantee under section 1305 of the Act shall establish a restricted reserve account beginning at the point when the revenues and operating costs of the health maintenance organization reach the break-even point, or by the end of the 60 month period following the making of the loan or the guarantee under section 1305 of the Act, whichever is sooner, unless a longer period is approved by the Secretary. This reserve shall be so constituted as to accumulate no later than twelve (12) years following the endorsement of the loan or loan guarantee, an aggregate amount equal to one year's principal of and interest on the loan, as determined under the terms of the loan made or guaranteed.

§ 110.506 Evaluation and award.

Within the limits of funds available for such purposes, the Secretary may

award loans or loan guarantees to those applicants whose projects will, in his judgment, best promote the purposes of section 1305 of the Act and the regulations of this part, taking into account:

(a) The ability of the health maintenance organization to achieve financial viability;

(b) The ability of the health maintenance organization to make repayments of the principal and interest when due and to have additional funds to defray the remaining operating deficits;

(c) The comments, if any, of the appropriate health systems agency or State health planning and development agency;

(d) The relative distribution of qualified applicants with respect to the following factors:

(1) The inclusion of medically underserved populations in the groups to be enrolled;

(2) Location relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the proposed area; and

(3) The percentage of anticipated total enrollment drawn from nonmetropolitan areas served or to be served by the applicant.

§ 110.507 Funding duration and limitation.

(a) The aggregate amount of principal

of loans made or guaranteed, or both, under section 1305 of the Act for a health maintenance organization shall not exceed \$2,500,000. In any fiscal year the amount disbursed to a health maintenance organization under section 1305 of the Act and this subpart (either directly by the Secretary or by an escrow agent under the terms of an escrow agreement or by a lender under a loan guaranteed under section 1305 of the Act and this subpart) may not exceed \$1,000,000.

(b) The approval of any loan or loan guarantee shall not obligate the United States in any way to make any additional loan or loan guarantee with respect to the approved application or portion thereof, except as may be otherwise set forth in the agreement between the United States and the approved applicant.

(c) In considering applications for loan guarantees under section 1305 of the Act and this subpart, the Secretary will give special consideration to applications for health maintenance organizations which will serve medically underserved populations.

§ 110.508 Loan provisions.

(a) *Disbursement of loan proceeds.* The principal amount of any loan made or guaranteed by the Secretary under this subpart shall be disbursed to the applicant in accordance with an

agreement to be entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable over a period of 22 years, beginning on the date of endorsement of the loan, or loan guarantee by the Secretary. The Secretary may, however, approve a shorter repayment period where he determines that a repayment period of less than 22 years is more appropriate to an applicant's total financial plan.

(c) *Repayment.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan or loan guarantee and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan made or guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan. Principal repayment during the first 60 months of operation may be deferred, with payment of interest only by the applicant during such period.

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Registered
Federal

FRIDAY, FEBRUARY 10, 1978
PART VI



WATER RESOURCES COUNCIL

FLOODPLAIN MANAGEMENT

Guidelines
for Implementing
Executive Order 11988

[8410-01]

WATER RESOURCES COUNCIL**FLOODPLAIN MANAGEMENT****Guidelines for Implementing Executive Order 11988**

AGENCY: Water Resources Council.

ACTION: Notice of Guidelines Adoption.

SUMMARY: This notice incorporates the Guidelines for Implementing Executive Order 11988—Floodplain Management adopted by the Water Resources Council on January 25, 1978 to assist Federal agencies in preparation of their regulations and procedures for implementing the Order.

FOR FURTHER INFORMATION CONTACT:

Frank H. Thomas, Floodplain Management Specialist, Policy Division, U.S. Water Resources Council, 2120 L Street NW., Washington, D.C. 20037, phone 202-254-8352.

SUPPLEMENTARY INFORMATION: These guidelines provide: (1) explanation of key terms and floodplain management concepts; (2) section-by-section analyses of the Order; and (3) procedures in the form of a decision-making process leading from the determination that a proposed action is or is not located in the base floodplain, through the implementation of agency actions.

Dated: February 3, 1978.

LEO M. EISEL,
Director.

PREFACE

These guidelines result from recognition in two Executive Orders that the Nation's floodplains are the scene of: (1) unacceptable and increasing flood losses and (2) degradation of natural and beneficial values. The 1966 Executive Order 11296—*Flood Hazard Evaluation*, represented Presidential recognition that structural flood control measures alone were inadequate to stem rising flood losses. It was followed by establishment of flood insurance, disaster assistance and related Federal programs, and some State and local government floodplain management programs. Yet, a decade later, annual flood losses were estimated to approach \$3 billion and continuing to rise.

In the decade following Executive Order 11296, there developed widespread recognition that the natural and beneficial values of floodplains, wetlands and coastal barrier islands must be restored and preserved. Thus, on May 24, 1977, the President issued a comprehensive environmental message accompanied by Executive Order

11988—*Floodplain Management*, to replace the 1966 Order. The new order is a significant policy initiative tying together the need to protect lives and property with the need to restore and preserve natural and beneficial floodplain values. The *Unified National Program for Floodplain Management* (1976) of the Water Resources Council is cited by the Order to provide direction. Federal agencies are directed to lead the Nation by exemplary demonstration of a comprehensive approach to floodplain management and to prepare procedures for achieving the goals of the Order.

The objective of these guidelines is to provide broad guidance in the interpretation of the Order to assist each agency which will be developing its own individual procedures for compliance with the Order. It is recognized that agency procedures will necessarily vary to meet legislatively prescribed missions as well as the requirements of the Order. This guidance should prove useful to State and local governments and interested members of the public.

The guidelines have been developed over a 12-month period by the efforts of an interagency task force of floodplain specialists. Comments and suggestions for improvement are welcomed.

GUY R. MARTIN,
Alternate to the Chairman.

EXECUTIVE SUMMARY**THE OBJECTIVE OF EXECUTIVE ORDER 11988 IS:**

- to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative •••••

THE ORDER APPLIES TO:

- ALL AGENCIES that: (1) acquire, manage, or dispose of Federal lands and facilities; (2) undertake finance, or assist construction and improvements; and (3) conduct activities and programs affecting land use, including planning, regulating, and licensing.
- ALL FEDERAL ACTIONS: described in the preceding sentence.
- ALL FLOODPLAIN LOCATIONS: whether they are along or near to rivers, streams, oceans, ponds, or related water bodies—as a minimum, areas subject to inundation by a flood with a one percent chance of occurring in any year (i.e., "100-year or base flood").

THE ORDER REQUIRES THAT AGENCIES:

- AVOID THE BASE FLOODPLAIN: unless it is the only practicable alternative.
 - ADJUST TO THE BASE FLOODPLAIN: if the base floodplain cannot be avoided, adjust to it in order to: (1) reduce the hazard and the risk of flood loss; (2) minimize the impact of floods on human safety, health, and welfare; and (3) restore and preserve the natural and beneficial floodplain values. The framework for meeting these requirements is the Water Resources Council's *Unified National Program for Flood Plain Management*.
 - EVALUATE, DESIGN, AND IMPLEMENT ALL AGENCY ACTIONS: to meet the policies of the Order.
 - NOTIFY THE PUBLIC: if the head of an agency finds there is no practicable alternative. This will usually occur after there has been early notice to the public on plans and proposals and alternative courses of action.
 - AMEND OR ISSUE REGULATIONS AND PROCEDURES: (1) to avoid the base floodplain if at all practicable; (2) to provide for actions to ADJUST TO THE BASE FLOODPLAIN, if it cannot be avoided; and (3) to keep the public informed of proposed actions in the base floodplain and encourage participation in floodplain decisionmaking. Each agency shall issue or amend existing regulations within one year to comply with this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration and the Council on Environmental Quality, and shall update such procedures as necessary.
- THESE GUIDELINES ARE INTENDED:**
- TO BE USED BY AGENCIES: in preparing their procedures in consultation with the WRC, CEQ, and FIA.
 - TO FURNISH: (1) explanations of key terms and floodplain management concepts; (2) analyses of the Order, section by section, for agency use in developing their regulations and procedures for complying with the intent of each section; and (3) procedures in the form of a decision-making process leading from the determination that a proposed action is or is not located in the base floodplain through the implementation of agency action.
 - TO ASSIST AGENCIES: by providing broad guidance in the implementation of the Order for use in the preparation of individual agency

procedures. It is recognized that agency procedures will necessarily vary to meet legislatively prescribed missions as well as the requirements of the Order.

ACKNOWLEDGEMENT

Preparation of these Guidelines began in December 1976 by a work group of the Floodplain Management Technical Committee of the Water Resources Council, in anticipation of an Executive Order. In October 1977 when the Water Resources Council's technical committees were abolished as part of a restructuring of the Council, a first draft of the Guidelines had been completed. In November 1977, a 60-day task force of essentially the same membership as the work group was appointed to complete the Guidelines.

The members of these two groups and colleagues who provided specialized assistance are listed below. We are indebted to all of these persons for their professional dedication and especially to the members of the drafting team whose overtime efforts secured completion of the Guidelines.

LEO M. EISEL,
Director.

WATER RESOURCES COUNCIL

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TABLE OF CONTENTS

PREFACE

EXECUTIVE SUMMARY

ACKNOWLEDGMENT

GLOSSARY

INTRODUCTION

PART I—INTERPRETATION OF EXECUTIVE ORDER 11988

Introduction to the Order.

- Section 1.
- Section 2.
- Section 3.
- Section 4.
- Section 5.
- Section 6.
- Section 7.
- Section 8.
- Section 9.

PART II—DECISION-MAKING PROCESS

Step 1—Determine if a Proposed Action is Located in the Base Floodplain.

- 1.A.—Types of Floodplains.
- 1.B.—Limits of Flooding.
- 1.C.—Critical Actions.

Step 2—Early Public Review.

Step 3—Identify and Evaluate Practicable Alternatives to Locating in the Base Floodplain.

*Members of the drafting team.

- 3.A.—Alternative Sites.
- 3.B.—Alternative Actions.
- 3.C.—No Action.
- Step 4—Identify Impacts of the Proposed Action.
- 4.A.—General Concepts.
- 4.B.—Lives and Property.
- 4.C.—Natural and Beneficial Floodplain Values.
- Step 5—Minimize, Restore, Preserve.
- 5.A.—Minimize.
- 5.B.—Restore and Preserve.
- 5.C.—Methods to Minimize, Restore and Preserve.
- Step 6—Reevaluate Alternatives.
- 6.A.—Locating in the Base Floodplain.
- 6.B.—Limit Action.
- 6.C.—No Action.
- Step 7—Findings and Public Explanation.
- 7.A.—Interagency Notice.
- 7.B.—Actions Subject to NEPA.
- 7.C.—All Actions Located in the Base Floodplain.
- Step 8—Implement Action.

APPENDIX A—FLOODPLAIN INFORMATION SOURCES

APPENDIX B—RELATED PROGRAMS AND REFERENCES

APPENDIX C—EXECUTIVE ORDER 11988—FLOODPLAIN MANAGEMENT

APPENDIX D—EXECUTIVE ORDER 11990—Protection of Wetlands

APPENDIX E—EXECUTIVE ORDER 11514—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Figure 1—Decision-Making Process for Executive Order 11988.

Figure 2—Floodplain Pictorial Glossary.

Figure 3—Flood Insurance Rate Map.

Figure 4—Flood Hazard Boundary Map.

TABLES

Table 1—Sources of Floodplain Information and Technical Assistance Services for Determining Whether a Location is in a Floodplain.

GLOSSARY

Throughout this document, the following basic definitions shall apply:

- **Action**—any Federal activity including: "... (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.
- **Agency**—an executive department, a government corporation, or an independent establishment and includes the military departments.
- **Base Flood**—is that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

- **Base Floodplain**—the 100-year floodplain (one percent chance flood-plain). Also see definition of floodplain.
- **Channel**—a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.
- **Critical Action**—any activity for which even a slight chance of flooding would be too great.
- **Facility**—any man-made or man-placed item other than a structure.
- **Flood or Flooding**—a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.
- **Flood Fringe**—that portion of the floodplain outside of the regulatory floodway (often referred to as "floodway fringe").
- **Floodplain**—the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).
- **Floodproofing**—the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.
- **Minimize**—to reduce to the smallest possible amount or degree.
- **One Percent Chance Flood**—the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.
- **Practicable**—capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.
- **Preserve**—to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.
- **Regulatory Floodway**—the area regulated by Federal, State or local re-

quirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the NFIP).

- **Restore**—to re-establish a setting or environment in which the natural functions of the floodplain can again operate.
- **Structures**—walled or roofed buildings, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).
- **Wetlands**—"those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds" (as defined in Executive Order 11990, *Protection of Wetlands*).

INTRODUCTION

Executive Order 11988—*Floodplain Management*, signed May 24, 1977, revokes and replaces Executive Order 11296, issued August 10, 1966. It establishes a new general policy and cites specific requirements for compliance by Federal executive agencies (hereafter referred to as agencies). Executive Order 11988 (hereafter referred to as the Order) requires agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid the direct or indirect support of floodplain development whenever there is a practicable alternative. The preferred method for satisfying this requirement is to avoid sites on the base floodplain. If an action must be located on the base floodplain, the Order requires that agencies minimize potential harm to people and property and to natural and beneficial floodplain values.

Executive Order 11988 is based in part on the National Environmental Policy Act of 1969, and adds new prominence to the environmental aspects of floodplain management which were not present in the old Executive order. To achieve this, the Order requires that decision-making by Federal agencies clearly recognize that floodplains have unique and signifi-

cant public values. Consideration must be given, therefore, to natural and beneficial floodplain values and to the public benefit to be derived from their restoration or preservation.

Throughout these guidelines the concept of the floodplain is expressed using varying terminology depending on the context of the discussion. When referring to the floodplain in a descriptive sense, such as in the discussion of natural values (Part II—Step 4.C.), the term floodplain refers to any land area susceptible to being inundated from any source of flooding. When referring to the floodplain from the standpoint of the Order's mandatory provisions, the terms used in these guidelines are "base floodplain," in most cases, and "500-year floodplain" when referring to critical actions (Part II—Step 1.C.). The base floodplain is the area subject to inundation from a flood having a one percent chance of occurring in any given year (100-year flood). The critical action floodplain is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year flood).

Executive Order 11988 directs implementation of the *Unified National Program for Flood Plain Management* (U.S. Water Resources Council, 1976) which sets forth a conceptual framework and recommends Federal and State actions for a continuing unified program for planning and action at all levels of government to reduce the risk of flood losses through floodplain management. The Unified National Program includes a broad Federal effort, both directly and by example, to pursue the wise and nonhazardous use of floodplains including recognition of natural and beneficial floodplain values.

To assure compliance with the Order, provision is made for both public and Federal review of proposed actions. Early public notice, Office of Management and Budget (OMB) Circular A-95 Notice, an environmental impact statement or its equivalent, and notice of findings are specified vehicles for providing information and opportunity for public participation. Budgetary review of compliance with the Order and periodic review of agency procedures by the Water Resources Council provide for further review. In providing opportunity for these reviews, the potential for withholding of budget approval should be minimized.

Agency procedures are required to be prepared in consultation with the Council on Environmental Quality (CEQ), the Water Resources Council (WRC), and the Federal Insurance Administration (FIA). These guidelines provide a basis for this consultation.

These guidelines have been prepared to provide broad guidance in the im-

plementation of the Order and to offer a common point of reference for each agency to prepare implementing procedures for compliance with the Order. The interpretations in the guidelines are built upon a strong Executive Order and directed at development of demonstrable Federal leadership in floodplain management in the immediate future. In preparing these guidelines, the Water Resources Council recognized: (1) the impossibility of anticipating the full range of individual program situations affected by the Order, and (2) the responsibility for individual agencies to tailor their procedures to meet both their legislatively prescribed missions and the requirements of the Order.

Because these guidelines are advisory and the agencies will draft their own rules and regulations, there is some concern that reasonable consistency will exist among agencies. Therefore, by October 1, 1978, the WRC will: (1) review the rules and regulations promulgated by the various agencies with respect to consistency with the guidelines and reasonable consistency among agencies, and (2) make recommendations for suggested actions.

These guidelines are presented in two parts. Part I provides a section-by-section interpretation basic on an overall understanding of the Order. Part II discusses the decision-making process required by Section 2 of the Order and is critical to the development of agency procedures. The guidelines do not intend to prohibit floodplain development in all cases, but rather to create a consistent government policy against such development under most circumstances.

Appended to the guidelines are descriptions of agency programs providing floodplain information, related programs and references, and the President's Policy Statement and copies of the complete Executive orders, *Floodplain Management, Protection of Wetlands*, and *Protection and Enhancement of Environmental Quality*.

Executive Order 11990—*Protection of Wetlands* has been included because most of the Nation's wetlands are located on floodplains. Also, both the floodplain and wetland orders were issued as part of the President's *Message on the Environment*, May 24, 1977. Thus the guidance provided in this document and the agency procedures for floodplain management will frequently apply to wetlands. Agencies may wish to develop a single set of procedures for these orders.

Executive Order 11514—*Protection and Enhancement of Environmental Quality* has been included to clarify the public notice aspects of the Order.

PART I—INTERPRETATION OF EXECUTIVE ORDER 11988

This part of the guidelines provides detailed section-by-section discussion of the Order as interpreted by CEQ, WRC, and HUD/FIA. Key concepts are discussed and reference is made to the decision-making process (Part II).

INTRODUCTION

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

The Introduction establishes the broad scope of the Order derived from NEPA and the flood insurance legislation. (Part II—Step 4, discusses impacts associated with the occupancy and modification of floodplains and support of floodplain development. Part II—Step 3 discusses the practicability of alternatives.)

SECTION 1

Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

The basic concepts expressed in Section 1 of the Order are: (1) all agencies are covered; (2) all actions are covered; (3) all agencies are to affirmatively carry out efforts to, and provide a good example of, sound floodplain management practices; and (4) all agencies are required to act, not merely consider, reducing risk, minimizing adverse impacts, and restoring and preserving floodplain values.

The comprehensiveness of the Order recognizes that each agency, in carrying out the various types of actions enumerated in this section, can affect the floodplain through any of its actions. The mandate that the agencies take a leadership role places them in a unique position relative to state, regional and local levels of government in carrying out actions which affect the floodplain. This role requires the agencies to lead other public and pri-

vate entities in achieving the goals of the Order by setting a good example. (The concepts of reducing risk, minimizing impact, and restoring and preserving floodplain values are discussed in Part II—Step 5.)

SECTION 2

In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

Three concepts are introduced in this section: evaluation, construction vs. planning programs, and implementation. Evaluation as discussed in these guidelines goes beyond identifying the impacts of a specific proposal and includes an ongoing analysis of the effects of agency policies and programs and the development of new or improved policies and programs to carry out this Order. (The analysis of the full range of their effects is discussed in Part II—Step 4.A.) By including planning programs as a separate item, the Order emphasizes that all actions, even those which do not result in a physical change, must be evaluated for their impacts to or within the floodplain. Implementation means that agencies must adopt and carry out evaluation procedures. The results of this evaluation should be included in any environmental assessment prepared under NEPA. (See Part II—Step 7.)

SECTION 2(a)(1)

Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

The intent of this subsection is that agencies use the best available information in determining whether a proposed action will be located in a floodplain. HUD/FIA floodplain maps are established as the minimum standards for making this determination. Even if no map data exists, the intent is that the agency proposing the action perform or have performed a determination of whether a proposed action is located in a floodplain. Guidance for

this determination was published in the *FEDERAL REGISTER*, (Vol. 42, No. 190, Friday, September 30, 1977) entitled "Guidance for Floodplain Management." (See Part II—Step 1.)

SECTION 2(a)(2)

If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The major issues here include: (1) consideration of alternatives which will avoid the floodplain, wherever practicable, and alternatives which will avoid adverse effects and incompatible development (development which has adverse effects); (2) minimization of harm to or within the floodplain resulting from proposed actions; and (3) circulation of a notice ("finding")—to the general public and affected agencies that siting in the floodplain is the only practicable alternative. The notice requirement introduced in this subsection is part of a larger concern for public notice and review carrying through to Section 4.

This section does not provide a standard for minimizing harm because of the great variety of actions and environments subject to the requirement. Instead, the Order expressly recognizes that it is more appropriate for agency procedures to spell this out for specific programs and activities.

Two important points should be noted about the standards to be embodied in agency procedures. First, while minimize means reduce to the smallest amount or degree, there is an implicit acceptance of practical limitations. Agencies are required to use all *practicable* means and measures to minimize harm. The Order does not expect agencies to employ unworkable means to meet this goal. Second, agency procedures are intended to be consistent with the standards in the Flood Insurance Program of the Federal Insurance Administration (FIA). For this reason, agencies are required to consult with FIA before issuing their procedures, and agencies with control over Federal property are required to follow the standards in FIA's regulations unless they are demonstrably inappropriate.

(Avoidance is discussed in Part II—Steps 3 and 4. Minimization is discussed in Part II—Step 5. Findings and

public notice are discussed in Part II—Steps 2 and 7.)

SECTION 2(a)(3)

For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

Items (i), (ii), and (iii) are the minimum to be included in the notice. (The notice requirements set out in this subsection are discussed in Part II—Step 7.)

SECTION 2(a)(4)

Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

This section requires public notice much earlier than the finding requirement, including notice for actions which do not require environmental impact statements. (The notice requirements set out in this subsection are discussed in Part II—Step 2.)

SECTION 2(b)

Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

This subsection complements the public review element in the Order (Subsections 2(a) (2), (3), and (4)). It provides for Federal review and raises the possibility that agency funds may be withheld from proposed actions which are not in accord with the intent of the Order. "In accord with" means in compliance with the policy and mandatory provisions (the letter and spirit) of the Order.

SECTION 2(c)

Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits,

loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

Each agency shall take floodplain management, as provided for in Section 2(d), into account when: (1) formulating its own water and land use plans, and (2) evaluating the water and land use plans of others.

In the operation of a license, permit, loan, or grant-in-aid program, each agency must make adequate provision for the evaluation and consideration of flood hazards. These provisions shall be included in agency's regulations and procedures. When the action involves more than one Federal agency, the "lead agency" will be responsible and will obtain input from all agencies. In all cases, as a minimum, the "practicability" and "minimization" standards of Section 2(a) of the Order apply. Therefore, as a precondition for an agency's approval of an application for a license, permit, loan, or grant-in-aid, the agency must assure that the requirements of Section 2(a) have been met. To the extent that an agency deems the requirements of Section 2(a) not to constitute adequate provision for evaluation and consideration of the flood hazard, the agency shall impose additional requirements.

The flood hazard aspects and to the degree they are quantifiable, the floodplain value aspects should be expressed in terms of: (1) potential (or residuals) for monetary loss; (2) human safety, health, and welfare; (3) shifting of costs or damage to others; and (4) potential for affecting the natural and beneficial floodplain values.

Agencies shall encourage and provide appropriate guidance to applicants to enable them to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans, or grants. It is important that applicants be made aware early in their planning process of the floodplain management parameters which the agency must consider when reviewing the proposed action. In this way, applicants will not go to the trouble of putting together completed plans and submitting them formally before being made aware of the standards to which the agency is subject in reviewing such plans. Agencies are encouraged to refer applicants to the agencies listed in Part II—Table 1 for guidance on floodplain management matters.

SECTION 2(d)

As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate

the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that and the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

Agency regulations and procedures will systematically address each section of the Order, and their procedures will define the extent to which responsibility for compliance is to be delegated by the agency head.

Each agency is to reflect the conceptual framework of floodplain management as set out in the *Unified National Program for Flood Plain Management* in its regulations and procedures developed in response to provisions of the Order. Floodplain management according to the Unified National Program has as its goals the "wise use, conservation, development, and utilization of interrelated land and water resources to serve objectives of economic efficiency, environmental quality, and social well-being as consonant with responsibilities * * *". This concept requires that the floodplain be viewed as having a role to play in the future of its surroundings. Within it, further adjustments in the way floodplain land is used or in the way floods behave must be made in a manner that is supportive of this future. From the standpoint of this Order, the Federal posture in floodplain management would be one of overcoming the apparent inertia in environmental value recognition when the appropriate floodplain role is being determined, as well as one of avoiding hazardous and uneconomic uses as part of this future role. The term "uneconomic" also includes the concept of costs shifted by floodplain users to others, both directly and indirectly.

In order to comply with the requirement that the means to be employed to pursue nonhazardous use be identified, each agency will be required to assess the degree of hazard associated with its program activities under a possible range of flood conditions. Then the agency must state the specific kinds of actions or adjustments that would be employed to comply with this section.

To the extent possible, agencies will utilize existing processes established under the NEPA directives of CEQ and WRC's Principles and Standards in addition to these guidelines.

Each agency shall consult with WRC, CEQ, and FIA in the preparation of their regulations and procedures

in response to the Order. This consultation will, of course, include any issue relevant to compliance with the Order. WRC will be the point of contact, and will arrange for consultation as needed with an interagency panel including members from the three agencies cited. Contact WRC Policy Office, 202-254-6352, for arrangements. Each agency's procedures should identify those actions, if any, which: (1) typically do not create adverse effects or incompatible development, or (2) normally will not require specific agency and public review under the Order.

To ensure that the public will be informed of agency procedures, the proposed agency regulations and procedures should be published in the *FEDERAL REGISTER* within a minimum 30-day review period provided. However, each agency must consult with CEQ, WRC and FIA prior to making procedures available for public review or prior to publishing them in the *FEDERAL REGISTER*.

Agency regulations or procedures should include relevant material in the following areas: (1) *mechanical requirements* that an agency will use to meet the procedural requirements of the Executive Order, such as timing, routing of documents, preparation and circulation of findings and notices, and specific links between the Order and other planning decision-making processes and requirements (e.g., budget process, NEPA, P&S.A-95); (2) *substantive requirements*, such as the standards for determining which alternatives are practicable, and the criteria and methods for minimizing harm (using FIA regulations as a guide wherever applicable); (3) *policy direction*, such as incorporation by reference of the Executive Order, Unified Program, NEPA, and other relevant requirements; general policies on the agency's approach to implementing the Order; program-specific policies; and commitments to research monitoring and evaluation; and (4) *other information*, such as appendices identifying the agency contacts in Washington and in the field who are principally responsible for implementing the Order, cross-references to other relevant agency procedures and manuals, and other material that will assist agencies and the public to understand just what the agency is doing to comply with the Order.

SECTION 3

In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

The requirements of this section of the Order are *supplemental* to those of Sections 1 and 2, and must be met by agencies having responsibilities for

Federal real property, structures and facilities.

SECTION 3(a)

The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

There are three key concepts expressed in this subsection: (1) the relationship of the NFIP requirements to the Order's minimization requirement; (2) the scope and nature of the NFIP requirements; and (3) situations where the NFIP requirements are not applicable to the agency actions.

The intent of this subsection is twofold; first, to assure that the Federal government will require itself no less than it requires of non-Federal entities for the protection of property from flood hazards, and second, to assure that the NFIP is not undermined by the actions of the Federal agencies. Both the positioning of the reference to the NFIP requirements following the avoidance and minimization responsibilities set out in Section 2, as well as the emphasis on the NFIP as the *minimum*, is most significant in that it recognizes the precedence of the requirements of Section 2 and limited scope of the NFIP requirements. Of the three areas of concern which the Order addresses (minimization of harm to lives, property and floodplain values), the NFIP requirements are primarily directed towards the protection of property. Thus, an agency's application of the NFIP requirements to proposed actions does not comprise full compliance with the minimization responsibilities of the Order.

The standards and criteria of the NFIP are directed towards the protection of structures and facilities from the flood hazard and the protection of existing development from the effects of new development. Under the NFIP, residential structures (including basements) are required to be elevated to or above the base flood level. Nonresidential structures may be elevated as described above, or floodproofed watertight to or above the base flood level. For the protection of existing development, the NFIP standards and criteria rely on a regulatory floodway (see Glossary).

Under the NFIP, actions involving the placement of facilities are subject to the requirements that the cumulative effect of the proposed action, when combined with all existing and anticipated development, will not increase the water surface elevation of

the base flood more than one foot at any point within the community wherein the action is proposed. It should be noted that the NFIP's one foot stage rise standard is a minimum standard, and more restrictive stage rise standards that are in effect in States and local communities take precedence over the NFIP standard as set out in Section 1910.1(d) of the NFIP regulations.

This subsection allows deviation from the NFIP requirements only to the extent that its standards and criteria are "demonstrably inappropriate" for a given type of structure or facility. Where this can be demonstrated, the proposed structure or facility must satisfy the requirements of Section 2, and must not endanger existing development, encourage development which would result in harm to or within the floodplain, or itself be vulnerable to flood damage.

SECTION 3(b)

If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

The key concepts in this subsection are: (1) requirements for new construction and existing structures; (2) accepted floodproofing measures and other flood protection measures; and (3) the requirement to achieve flood protection for structures, wherever practicable, without the use of fill.

For the purposes of the Order, the term "new construction" includes construction associated with: (1) new structures and facilities; (2) the reconstruction of existing structures and facilities following damage caused by fire, flood or other hazard; and (3) the improvement of existing structures and facilities by rehabilitation, repair, alteration or addition. The application of the Order's requirements to existing structures is emphasized in this section.

Floodplain management approaches have in the past set varying thresholds for what constitutes a major improvement. In most cases a market value threshold has been relied on which varies from 50 percent to 80 percent of the pre-improvement value of the structure or facility (see, for instance, the NFIP definition of substantial improvement (24 CFR 1909.1). In the case of major improvements, agencies are offered an opportunity to compensate for previous siting and design decisions which did not reflect the intent of the Order. In meeting the responsibility to apply the Order's requirement to existing structures, the agen-

cies shall consider whether the proposed action would: (1) result in an increase in the useful life of the structure or facility in question; (2) maintain the investment at risk and the exposure of lives to the flood hazard; or (3) eliminate an opportunity to restore the natural and beneficial floodplain values.

Accepted floodproofing measures for structures are defined under the NFIP regulations and are set out in the discussion under Subsection 3(a), above. The Order further limits what constitutes accepted floodproofing for structures through additional language in this subsection which requires that, wherever practicable, all structures shall be elevated using open works, e.g., columns, walls, piles, piers, etc., rather than fill (see Appendix B). Accepted floodproofing measures for facilities vary considerably, since the scope of the term facility, as defined in the Glossary, is extremely broad. Floodproofing measures for certain types of facilities, e.g., sewer interceptor lines and other types of piping, and bridges and roads have been developed, and are familiar to agencies having responsibilities in those areas. Other flood protection measures including warning and evacuation plans, etc. are discussed in the *Unified National Program for Flood Plain Management*.

SECTION 3(c)

If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

The conspicuous delineation of past and probable flood heights is required on property which has been or could be subjected to flooding and is used by the general public. This delineation responsibility applies to all types of property (land, structures and facilities). Agencies must identify in their regulations and procedures the areas where this requirement will be most effective in minimizing the adverse impacts of floods, especially on human safety. The 100-year flood level and the flood of record should be shown where available. The 500-year flood should also be shown where appropriate.

SECTION 3(d)

When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law;

or (3) withhold such properties from conveyance.

Three requirements are set out for agencies which dispose of Federal properties (land, structures or facilities) in the base floodplain. Of these three, the agencies must meet both requirements 3(d)(1) and 3(d)(2), or they must meet Section 3(d)(3). That is, if both 3(d)(1) and (2) cannot be satisfied, or if the agency does not choose to implement both, then the property must be withheld from conveyance.

Under Section 3(d)(1), the agencies' regulations or procedures must provide for the identification of those uses that are restricted, and how they are restricted under state and local floodplain regulations. Such restrictions are generally set out in state shoreline or coastal management plans or regulations, local plans and building codes, zoning and subdivision ordinances. If no such restrictions exist, the agency must note this when it implements the finding and public notice procedures (see Part II—Step 7). Then it still must satisfy either 3(d)(2) or 3(d)(3).

Under Section 3(d)(2), the agencies are required to provide appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, which would augment those restrictions referred to in (d)(1), above, or if none, adequately stand on their own. For the purpose of this Order, the term "appropriate" as it refers to restrictions, means restrictions equal in scope and strictness to those of this Order. Since the property in question is located in the floodplain, then the agency must assure through these restrictions that harm to lives and property and to floodplain values is identified, and such harm is minimized and floodplain values are restored and preserved. Section 3(d)(2) recognizes that these additional restrictions need not be applied to the conveyance where prohibited by law.

Section 3(d)(3) requires that where an agency cannot or does not choose to meet the requirements of either 3(d)(1) or (2), or both, it is prohibited from making the conveyance. Even where the option is open to meet 3(d)(1) or (2), withholding the conveyance may be the most appropriate approach to meeting the Order's intent. Where, for instance, the existing use is not compatible with the intent of the Order, or the area in question is not subject to meaningful floodplain management requirements, withholding the land or facility from conveyance may be required.

This section makes it clear that each agency now has a mandate to condition or withhold the conveyance of Federal property, unless a specific law expressly prohibits such activity.

SECTION 4

In addition to any responsibilities under this Order and Sections 202 and 205 of the

Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

This section applies to the Federal Housing Administration, the Veterans Administration, and the six agencies enumerated in the Flood Disaster Protection Act of 1973: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration (to the extent that an Executive Order may be binding on them). Other agencies that have responsibilities similar to those described in this section are also subject to its requirements. The notice requirements of this section are in addition to the other responsibilities of these agencies under the Order and under Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128).

This section covers any financial transaction guaranteed, approved, regulated or insured by a Federal agency which is and which pertains to an area located in a floodplain. If an agency does not operate on an individual transaction basis with private parties, but rather guarantees, approves, regulates or insures the institutions conducting such transactions, then it is the agency's responsibility to require that the institution provide the requisite notice.

The private parties must be informed of the hazards of locating in the base floodplain. Such notice should be given in a way which: (1) explains the chances of being flooded in language readily understandable to the private party; (2) indicates if the property is in a floodway or coastal high hazard area; (3) indicates if there is a flood insurance purchase requirement; and (4) indicates if the transaction involves the sale of unimproved real estate, that the property may be subject to floodplain management regulations which dictate the manner, and in some cases the location of new construction.

SECTION 5

The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Agencies may be called on to furnish documentation covering revisions or

special applications of procedures in years subsequent to 1978. WRC will involve interested and affected agencies in the review.

SECTION 6

As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

The terms "agency," "base flood," and "floodplain" are defined in the Glossary. The 100-year floodplain is used as the base or minimum floodplain for these guidelines.

SECTION 7

Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

The previous Executive Order 11296 is revoked, but agencies are allowed to operate under existing procedures until they can be revised to reflect this Order. At the latest, this revision must be accomplished by May 24, 1978.

SECTION 8

Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Although Section 8 exempts flood-related and other emergency activities "essential to save lives and protect property and public health and safety" from the provisions of the Order, (e.g., the requirement to prepare and circulate notice of proposed activity), it doesn't exempt them from the spirit of the Order expressed in Section 1. Activities under portions of legislatively directed emergency programs, (e.g., under P.L. 84-99), covering the same kinds of situations as those sections specifically cited in the Order, are clearly within the meaning and intent of Section 8, and therefore are subject to the same interpretation.

SECTION 9

To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision-making, and action pursuant to the National Environmental Policy Act of 1969, as amended.

This section allows units of general purpose, local government which may assume the status of Federal agencies for purposes of NEPA compliance under the HUD Community Development Block Grant (CDBG) Program to assume the responsibility for carrying out the provisions of Section 2(a) of this Order for specific projects under CDBG as part of their overall NEPA responsibilities. Thus, the provisions of Section 2(a) of this Order will be carried out in conjunction with NEPA compliance, and one responsibility may not be assumed without the other also being assumed by a grantee. Compliance with Section 2(a) of the Order will be completed prior to the grantee's certification of compliance with NEPA.

PART II—DECISION-MAKING PROCESS

This part of the guidelines is structured in eight steps to reflect the decision-making process (Figure 1) required in Section 2(a) of the Order. The eight steps are summarized below.

1. The first step of the decision process is to determine if a proposed agency action is located in the base* floodplain. (As reflected in Figure 2, the base* floodplain is the 100-year floodplain. Also, the term 500-year floodplain should be substituted for base* floodplain for critical actions—see Step 1.C.) This discussion identifies various types of floodplains and their boundaries. If the proposed action is not in the base* floodplain, proceed to Step 4.

2. The agency must make public its intent to locate a proposed action in the base* floodplain. This notice must provide a description of the proposed action with ample lead time for meaningful input from the public.

3. If the action is in the base* floodplain, the third step is to identify and evaluate the practicable alternatives to locating in the base* floodplain. This determination requires the agency to consider whether the base* floodplain can be avoided either through alternative siting; through alternate actions which would perform the intended function but would minimize harm to or within the floodplain; or by taking no action.

4. For the proposed alternative, the agency must identify if the action has

impacts in the base* floodplain or directly or indirectly supports floodplain development that has additional impacts. If the proposed action is outside the base* floodplain and has no identifiable impacts or support, the action can be implemented, Step 8.

5. If the proposed action has identifiable impacts or support, these effects must be minimized. Further, natural and beneficial floodplain values must be restored and preserved.

6. The proposed alternative can now be reevaluated taking into account the

identified impacts, the steps necessary to minimize these impacts and opportunities to restore and preserve floodplain values.

In the base floodplain:* If this reevaluation shows that the proposed action is no longer feasible, consider limiting the action to make a non-floodplain site practicable or taking no action.

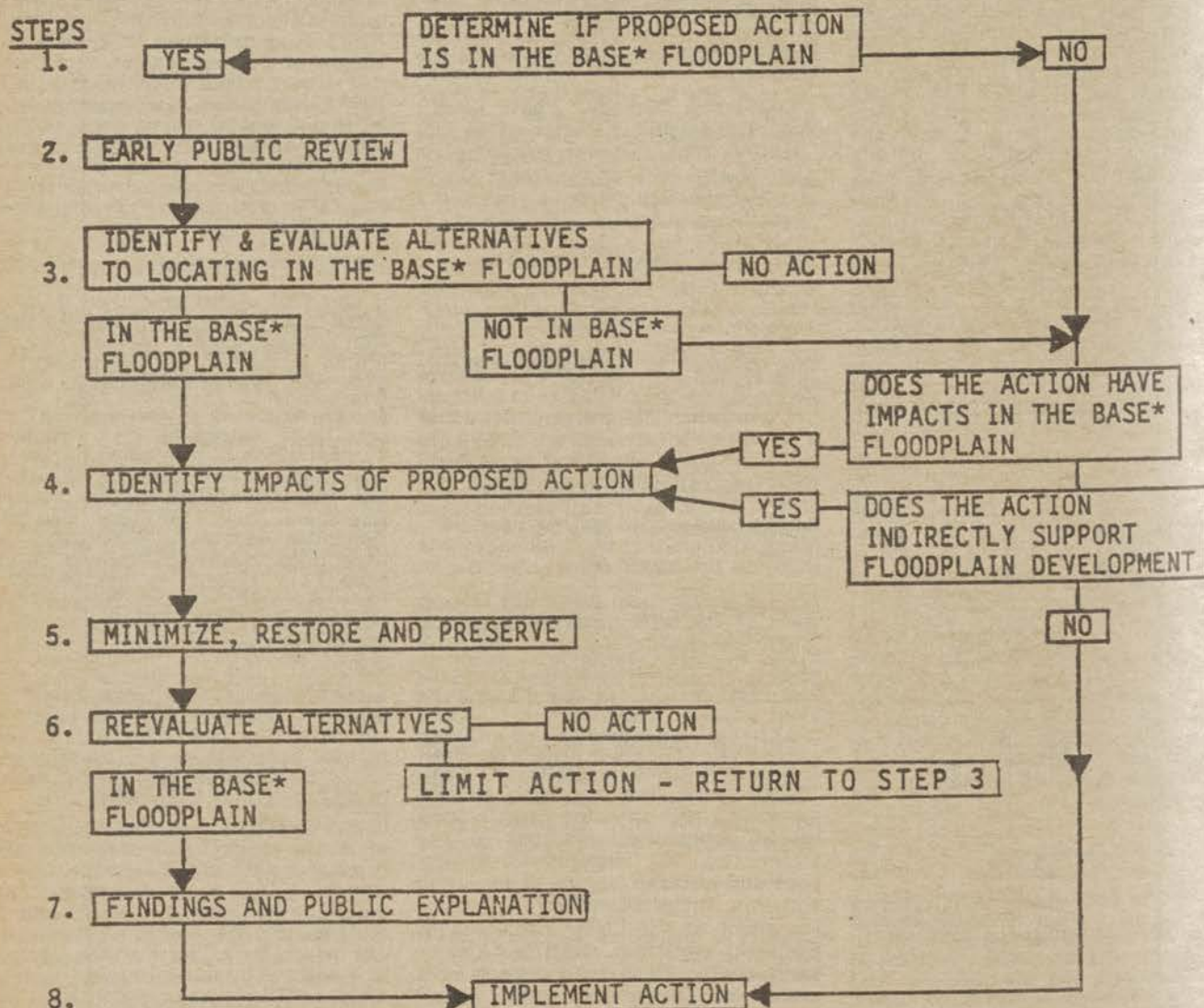
Outside the base floodplain:* If the action has impacts or support, consider modifying or relocating the action to eliminate or reduce these effects or taking no action.

7. If the agency head finds that the only practicable alternative is locating in the base* floodplain, public notice of the reasons must be given for this finding (including the alternatives considered).

8. After a reasonable period to allow for public response, the proposed action can be implemented.

Note that depending on the situation, this process may be carried out with fewer steps if all of the objectives of the decision-making process can be achieved.

DECISION-MAKING PROCESS FOR E.O. 11988 FIGURE 1



* FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE".

STEP 1—DETERMINE IF A PROPOSED ACTION IS IN THE BASE FLOODPLAIN

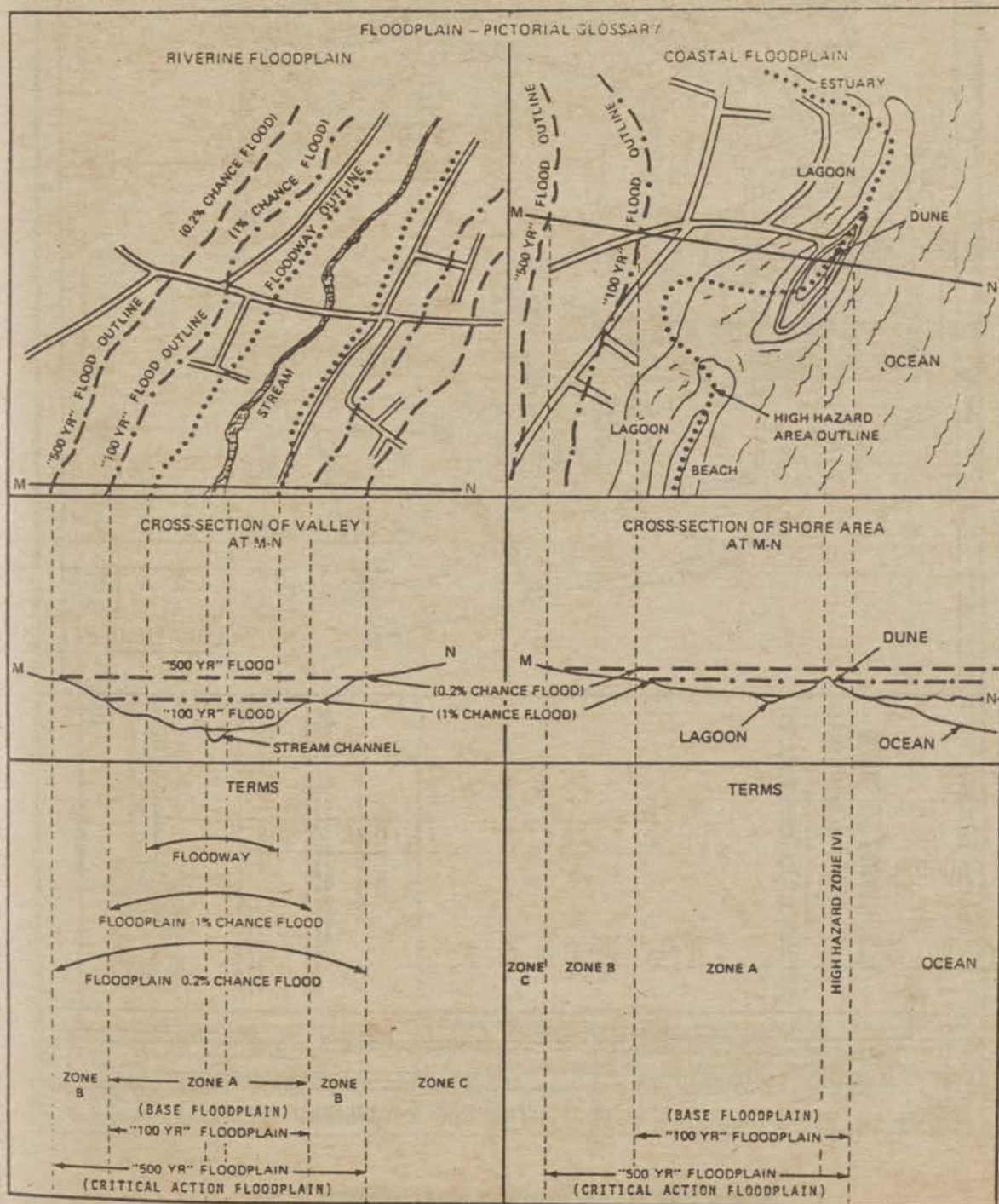
The first step in complying with the Order is to determine whether or not a proposed action is located in the base floodplain. This procedure was published in the *FEDERAL REGISTER* (Vol. 42, No. 190, Friday, September 30, 1977). The following discussion includes types of floodplains (1.A.), limits of flooding (1.B.) and critical action (1.C.).

1.A. Types of Floodplain

The general types of land area where flood hazards are encountered

are riverine floodplains and coastal floodplains. The term floodplain is not limited only to areas surrounding large bodies of water such as coastal areas and the shores of large rivers. In this document, the term floodplain refers to any land area susceptible to being inundated from any source of flooding including those which can be flooded from small and often dry watercourses. Small watercourses can become sources of major flood damage when their watersheds experience rapid runoff from intense rain or melting snow. At some locations the flood hazard results from several sources.

Aggravating factors contribute to the flood hazard in many riverine, coastal, and sheet flow areas. This is particularly true in riverine situations where high velocity flow causes flood-related erosion. In other areas where sheet flow has high velocity, sheet flow erosion may occur. Unusually high waves and tides are the most frequent agents of coastal erosion. Ice also contributes to structural damages. Land subsidence may occur with extensive withdrawals of ground water or other substances producing a relative increase in flood levels.



1.A.1. RIVERINE FLOODPLAINS

Riverine floodplains are valley areas adjacent to any size stream or river which can be covered by floodwaters (Figure 2). Flooding in these areas results from excessive rainfall, snowmelt, or a combination thereof. If runoff is increased to the point that the carrying capacity of the channel is exceeded, flooding occurs. Flooding also occurs when the capacity of the stream channel is reduced by natural obstructions (ice or debris dams, sediment, and vegetation) and man-placed obstruction (structures and facilities). Some areas flood either from tributary stream overflow, backwater from a major stream, or from both simultaneously.

1.A.2. COASTAL FLOODPLAINS

Coastal floodplains border lakes, estuaries, oceans, or similar bodies of standing water (Figure 2). Flooding in these areas is due to landward flows caused by unusually high tides, waves from high winds, storm surges, tsunamis (large waves in the sea associated with very strong earthquakes or other impulsive disturbances), or by a combination of these causes.

1.A.3. SPECIAL FLOODPLAIN AREAS

Special floodplain areas encompass sheet flow or shallow flooding areas, wetlands, and sinkholes. Sheet flow occurs where a clearly defined channel is absent and where the path of flooding is unpredictable and indeterminate. In some cases, high velocity flow may occur with sheet flow, as it does commonly on debris cone floodplains (alluvial fans). These cones build up from eroded geological debris that is carried by mountain streams and deposited when the stream encounters an abrupt decrease in slope. Other flood problems are caused when development occurs in areas drained by sinkholes which often become plugged.

1.B. Limits of Flooding

For purposes of the Order, all agency heads will be concerned at a minimum with the floodplain area which would be inundated by a flood having a one percent chance of occurring in any year—the so-called “100-year or base flood”—because they must support any decision to conduct, support, or allow an action (i.e., “structure,” “facility” or “activity”)

to be located within this area. The pictorial glossary (Figure 2) depicts and defines the 100-year or base floodplain and other portions of floodplains. The base floodplain is delineated by Zone A on the examples of flood insurance maps shown in Figures 3 and 4.

Within the base floodplain, extreme hazard is associated with those portions of riverine and coastal floodplains nearest to flood sources, where depths and velocities of flood waters are greatest. These areas are usually referred to as a “floodway” and “coastal high hazard area”, and with few exceptions, are locations to be avoided. These are the floodplain areas where flooding is not only most frequent and damaging, but where natural and beneficial values of the land and water interface are at their maximum.

In addition, agency heads should consider the implications of the occurrence of a flood larger than the base flood on the economics and safety of a proposed floodplain action. If a proposed action would be especially dangerous when exposed to larger floods, consideration must be given to the larger floodplain area. (See Step 1.C. “Critical Actions”.) Herein, such larger floodplains are identified as those of a flood with a 0.2 percent chance of occurring in any year—the so-called “500-year flood”—shown as Zone B on the Flood Insurance Rate Maps issued by the Federal Insurance Administration. Larger floods are also used to delineate floodplains in flood hazard studies by other agencies. (Examples are the Standard Project Flood (SPF) used in the U.S. Army Corps of Engineers’ studies, and the Maximum Probable Flood (MPF) used in Tennessee Valley Authority (TVA) studies which are computed from basin runoff potentials rather than through statistical analyses of flow frequencies.) In summary, the key question is: How does the agency decision-maker ascertain if his decision involves a floodplain location, particularly a site within the floodplain of the one percent chance flood?

1.B.1. PROCEDURES FOR DETERMINING A FLOODPLAIN LOCATION

The Order states that “this determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if

available.” Two cautions are suggested in using flood insurance maps: (1) they generally do not delineate portions of the floodplain less than 200 feet wide where headwater flooding may be a concern, and (2) possible adverse consequences from future urbanization are difficult to infer from the maps. Thus, technical assistance may be desirable for interpreting flood insurance maps. In addition, decision-makers seeking flood insurance maps may find them unavailable for areas of extensive public land holdings.

The following is a guide for obtaining the floodplain information needed to make a determination.

Areas of Predominantly Private Land Ownership: If a decision involves a publicly or privately owned site within an area of predominantly private ownership, a map showing the flood hazard areas will usually be available from the National Flood Insurance Program administered by the Federal Insurance Administration (FIA), HUD. Detailed maps showing the elevations and boundaries of the “100-year” (Zones A and V) and “500-year” (Zone B) floodplains are known as “Flood Insurance Rate Maps” (FIRM). A sample is shown as Figure 3. Such maps have been published by the FIA for over 1,300 communities and maps for more communities continue to be published for FIA’s program to provide maps of all flood prone areas by 1983. Many of the communities which have a FIRM also have a Flood Insurance Study Report (FIS) containing detailed flood information. Some 13,000 less detailed maps showing the approximate areas of the base (Zone A) floodplain are available for most of the remaining communities. These are called “Flood Hazard Boundary Maps” (FHBM). A sample is shown as Figure 4. Similar information, some very detailed, is also available from the agencies described in Appendix A. The search for flood hazard information should follow the sequence below.

- The detailed map (FIRM) or the Flood Insurance Study (FIS) report should be consulted first. Information on how to request single maps, FIS reports, and how to be placed on the FIA mailing list to receive new or revised FIRM’s, FHBM’s, and FIS reports is detailed in Appendix A.

- If a detailed map (FIRM) is not available—obtain an approximate boundary map (FHB) from the same source as in the preceding step. If the proposed site is at or near the "100-year" boundary, if data on flood elevations are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site—seek detailed information and assistance from the agencies listed in Table 1. (There are additional agencies with professional competence not listed in Table 1 which can perform their own floodplain studies when needed.)
- If an approximate boundary map (FHB) is not available or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site—seek detailed information and assistance from the agencies listed in Table 1.
- If the agencies listed do not have or know of detailed information and are unable to assist in determining whether or not the proposed site is in the base floodplain—seek the services of a licensed consulting engineer experienced in this type of work. The quality of information obtained from the consulting engineer

must be comparable to that required of flood insurance study contractors for the FIA. A list of experienced consulting engineers from which a selection can be made may be provided by the agencies in Table 1.

Areas of Predominantly Federal and State Land Holdings: If a decision involves an area or location within extensive Federal or State holdings, it is unlikely that FIS reports and FIRM or FHB maps would be available. In this event, information should be sought from the land administering agency before information and/or assistance is sought from the agencies listed in Table 1. If none of these agencies has information or can provide assistance, the services of an experienced consulting engineer should be sought as described above.

Actions located out of the base floodplain as shown on either the FIRM or FHB would meet the minimum requirements and no further action is required for compliance with the Order, unless the action impacts the base floodplain (Step 4), indirectly supports floodplain development (Step 4.A.), or is a critical action (Step 3.C.).

liquefied natural gas terminals and facilities producing and storing highly volatile, toxic, or water-reactive materials?

- Given the flood warning lead-time available, would the occupants of buildings such as hospitals, schools, and nursing homes be insufficiently mobile to avoid loss of life and injury?
- Would essential and irreplaceable records, utilities, and/or emergency services be lost or become inoperative if flooded?

If the answer to questions such as these is "yes", an alternative location must be sought completely outside the larger floodplain. Agencies listed in Table 1 may be in a position to provide information and assistance in evaluation of proposed locations for critical actions. If neither the base floodplain nor larger floodplain for certain critical actions can be avoided, the next responsibility (Step 2) is to provide an opportunity for public review and comment on the proposed floodplain location.

STEP 2—EARLY PUBLIC REVIEW

Early public review is one of several requirements of the Order directed at the objective of public involvement. It should be considered in the context of the whole public involvement process.

The objective of public involvement is to provide sufficient information early enough in the process of making decisions affecting floodplains so that the public can have impact on the decision outcome. The order includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting for the rationale for proposed actions affecting floodplains. These requirements are stated in Section 2 of the order, which:

- requires agencies to provide opportunity for early public review of any plans or proposals for actions in floodplains;
- requires agencies subject to the OMB A-95 Budget Circular to provide notice explaining a proposed action;
- requires preparation and circulation of a notice of findings and explanation prior to taking an action.

An overview of these sections suggests that agency procedures should provide an integrated procedure for involvement of the public in the floodplain management decision-making process. Thus, to insure that adequate information and opportunities are provided for the public to effectively participate in floodplain decisions, and to

TABLE 1.—Sources of floodplain information and technical assistance services for determining whether a location is in a floodplain

Agency*	Floodplain maps and profiles		Technical assistance services
	Riverine	Coastal	
Department of Agriculture: Soil Conservation Service.....	•	•	•
Department of the Army: Corps of Engineers.....	•	•	•
Department of Commerce: National Oceanic and Atmospheric Administration.....		•	•
Department of Housing and Urban Development:			
Federal Housing Administration.....			•
Federal Insurance Administration.....			•
Department of the Interior:			
Geological Survey.....	•	•	•
Bureau of Land Management.....	•	•	•
Bureau of Reclamation.....	•	•	•
Tennessee Valley Authority.....	•	•	•
Delaware River Basin Commission.....	•	•	•
Susquehanna River Basin Commission.....	•	•	•
States.....	Varies from State to State.		

*See app. A for detailed description.

1.B.3. PROCEDURES IF SITE IS IN THE BASE FLOODPLAIN

If the location is within Zones A or V as shown on a FIRM, or in Zone A on a FHB, as verified by other detailed information, alternative sites outside of these zones and alternative actions are to be identified and evaluated (Step 3.) in an initial attempt to avoid the floodplain.

1.C. Critical Actions

As indicated previously, the mini-

mum floodplain of concern for certain critical actions is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). This floodplain includes both Zones A and B as shown on FIRM's. Critical actions are those for which even a slight change of flooding would be too great. Some key questions in this regard are:

- If flooded, would the proposed action create an added dimension to the disaster as could be the case for

meet the requirements of the Order, the following elements should be incorporated in agency public involvement procedures:

- A description of the overall audience, including specific segments to whom public notice information will be targeted (e.g., floodplain residents, elected officials, basin residents, interest groups, other agencies, etc.). The responsibility is to reach as broad an audience as possible.
- A description of the vehicles or public information mechanism which will be utilized to reach the target audience (e.g., public hearings, newsletters, workshops, advisory groups, etc.). The responsibility is to provide continuous interaction and involvement opportunities for the public during the floodplain decision-making process.
- A description of the purpose for which various public notice actions will be undertaken and assurance that public input will be integrated into the decision-making process (e.g., specific efforts to provide one-way information dissemination, two-way public communication or interaction, etc.). The responsibility is to provide information which promotes the fullest understanding of the proposed plan or action.
- A statement explaining the timing of public notice actions to promote public understanding and provide opportunities for the public to affect a proposed action or plan before alternative actions have been precluded.

It is recognized that the public involvement process must be tailored to specific program types (permits, direct and federally assisted projects, etc.) and will vary. Nevertheless, agency procedures must be compatible with Section 2(b) of Executive Order 11514 (Appendix E), and must also apply to actions which do not require preparation of an EIS under Section 102(2)(C) of NEPA.

If there is a reasonable likelihood that a plan or proposed action or its alternatives will impact a floodplain, then it should be announced as early as that is known, and not delayed until much more detailed information is developed.

It is recognized that variations in program types will determine the earliest time in the floodplain decision-making process when the public can be notified. For example, in the case of a private developer applying for a permit to construct a housing complex with floodplain impact, the earliest public notice may not come until a point very late in the decision-making process. At that point, the only options may be no project, or the project

as designed and proposed. In another example, a major facility such as a proposed regional wastewater treatment facility requires considerable expenditure for site evaluation, engineering and design. Public notice must precede major site identification and analysis so the public can have an input early in the decision-making process of preliminary site screening and selection. If not, public choice options may be foreclosed, or decisions will not be based on similarly detailed information bases.

Early public notice is the first in a series of public information and involvement activities. This would logically be followed by continuing public communication at Step 4, in identifying impacts, Step 6, reevaluating alternatives through the environmental review process, and at Step 7, in the issuance of findings and explanation of why the proposed plan or action must impact the floodplain.

STEP 3—IDENTIFY AND EVALUATE PRACTICABLE ALTERNATIVES TO LOCATING IN THE BASE FLOODPLAIN

Having determined that a proposed action is located in the base floodplain, the agency is required by the Order to identify and evaluate practicable alternatives to locating in the base floodplain. Alternatives to be evaluated include: (1) carrying out the proposed action at a location outside the base floodplain (alternative sites); (2) other means which accomplish the same purpose as the proposed action (alternative actions); and (3) no action.

3.A. Alternative Sites

Alternative sites must be identified and the practicability of such sites evaluated. If a practicable site exists outside the base floodplain, the proposed action must not be located in the base floodplain. Whenever a floodplain site is the only practicable alternative, the agency analysis leading to this conclusion should be fully documented. In determining the practicability of a non-floodplain site, the general concepts of site feasibility apply. At a minimum, site practicability shall be addressed in the light of the following:

- natural (topography, habitat, hazards, etc.);
- social (aesthetics, historic and cultural values, land use patterns, etc.);
- economic (cost of space, construction, services, relocation); and
- legal (deeds, leases, etc.).

3.B. Alternative Actions

Alternative actions must be considered before a decision is made to carry out an action in the base floodplain. These are actions which substitute for

the proposed action in that they comprise new solutions or approaches which serve the same function or purpose as that proposed, but which have less potential for harm. For example, where an agency has proposed the construction of a document storage facility within the floodplain to handle expanding record keeping needs, the alternative of microfilming the documents could allay the need for a new structure. Similarly, rather than providing expanded waste treatment capacity for an area by constructing a new or larger facility in the floodplain, the alternative of using surplus capacity in a neighboring locale could serve the need for a new or expanded facility.

3.C. No Action

No action is also an alternative, and assessment of this course is required. The alternative of no action probably can not be fully evaluated until a determination has been made in Step 4 of the harm to or within the floodplain resulting from the proposed action.

STEP 4—IDENTIFY IMPACTS OF THE PROPOSED ACTION

If the agency has determined that the only practicable alternative is locating in the base floodplain, the impacts of the proposed action must be identified. Similarly, where actions proposed to be located out of the floodplain will affect the base floodplain, impacts resulting from these actions must be identified. Since the Order is based primarily on NEPA, the agencies can draw upon the impact identification and assessment experience and guidance which they have developed in their implementation of NEPA. The concepts of impact assessment applicable to both NEPA and the Order are identical, with the Order's focus being narrower. The following discussion addresses general concepts of impact identification and assessment (Step 4.A.), and the two areas of concern which are impacted as a result of the occupancy and modification of floodplains: lives and property (Step 4.B.), and floodplain values (Step 4.C.).

4.A. General Concepts

In their regulations and procedures, the agencies must identify the means by which they will address the following impact-related issues:

- All agency actions can have impacts associated with the modification of floodplains. Although the modification of floodplains and ensuing impacts most clearly result from actions located in the floodplain or at its periphery, it can also result from actions out of the floodplain.
- Certain types of agency actions may support subsequent actions which

have additional impacts of their own;

- The Order focuses on the adverse impacts of proposed actions on lives and property, and on natural and beneficial floodplain values.
- The three basic types of impacts are: (a) positive and negative; (b) concentrated and dispersed; and (c) short- and long-term.

4.A.1. DIRECT AND INDIRECT SUPPORT OF FLOODPLAIN DEVELOPMENT

The Order requires the agencies to avoid the direct and indirect support of floodplain development. For the purposes of these guidelines, an action supports floodplain development if it encourages, allows, serves or otherwise facilitates additional floodplain development. The agencies may also reflect in their regulations and procedures, the manner in which agency actions similarly accommodate the maintenance of existing uses in the floodplain. That is, a proposed action can reinforce existing land use patterns which generally have developed without reflecting the concepts of hazard and risk minimization and restoration and preservation of natural floodplain values which form the basis of the Order.

Direct support results from actions located on the floodplain, while indirect support results from those outside the floodplain. For example, the location of a major public service structure or facility (a post office, library or office building), in the floodplain, requires new or additional investment in or construction of support facilities for food service, parking, etc. Further, simply through their location, such actions would foster additional developments in the floodplain. Floodplain development could be indirectly supported by the provision of infrastructure (water and waste water systems, power supplies, highway and secondary road networks, mass transit systems and airports) outside the floodplain.

Clearly, it is the intent of the Order that the impacts of Federal actions and the impacts of actions supported by Federal actions be evaluated. However, the identification and evaluation of these positive and negative changes to the systems of flood losses, threats to life and health, and environmental values are often both difficult and even speculative. Moreover, the process by which an agency tries to describe the actions supported by their actions is both complex and often not well addressed in accepted methodologies, without a clear conceptualization of the supported action, there is little chance that the impacts can be identified. On the other hand, when the supported actions are describable in terms of growth experience in the area or from experience with similar actions elsewhere, the impacts of the

supported actions can be identified as they are for the proposed Federal action.

4.A.2. TYPES OF IMPACTS

The three basic types of impacts which must be addressed are: (a) positive and negative; (b) concentrated and dispersed; and (c) short and long term.

Positive and negative impacts: both must be identified, even though the focus of impact identification and assessment is on negative or adverse impacts. This is necessary in order to identify the full range of impacts against which to weigh the practicability of a proposed action. In addition, it must be recognized that impacts which are beneficial to some, may be harmful to others. For example, draining wetlands establishes an environment which is suitable for certain uses, but at the expense of the beneficial values of the wetland.

Concentrated and dispersed impacts: both may result from any action. The impact is concentrated if it occurs at or near the site of the action and is dispersed if it occurs at a site remote from the action. For example, a concentrated impact of constructing a building on a wooded area is the loss of vegetation at the site. A dispersed impact of the same action could be sedimentation downstream caused by erosion at the site.

Short- and long-term impacts: both must be analyzed in order to evaluate the total impact of an action. Short-term impacts are temporary changes occurring during or immediately following an action and usually persist for a short while. Long-term impacts occur during or after an action and may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions. Long-term impacts may persist for a considerable time and may continue indefinitely. An example of a short-term impact could be sedimentation at or below a construction site. A long-term impact could be the loss of valley floodwater storage resulting from the cumulative effect of floodplain development.

4.A.3. SOURCES OF IMPACTS

Regardless of the source of impacts, the agencies are required to identify the types of impacts discussed above which arise from their actions when these impacts affect the floodplain. Thus, this requirement applies to actions proposed both in and out of the base floodplain (or the 500-year floodplain where a critical action is proposed). The location of the action causing the impact determines which of the requirements of the Order must be met by the agencies. For actions proposed in the base floodplain (or the 500-year floodplain where a critical

action is proposed), all of the requirements of the Order must be met as outlined (Figure 1). For actions proposed out of the base floodplain, however, the Order does not require that the public notice and findings discussed in Steps 2 and 7 be prepared. Similarly, since in these cases the action causing the impacts in the base floodplain is located outside of it, the practicability test (Step 3) is not required. As a minimum, however, the agencies must identify these impacts and minimize ensuing harm to or within the floodplain which would result if the action is taken as proposed. Because there is no requirement for public notice or the practicability test, the minimization responsibility (Step 5) takes on added significance. This should be reflected in agency procedures.

The agencies are strongly encouraged to apply the public notice procedures and alternate site and action evaluations to actions proposed out of the floodplain which will result in impacts to the floodplain. It has been recognized that public input in agency decision-making processes through NEPA has improved the environmental soundness of these decisions. It is even more reasonable to apply the alternate site and action evaluation to actions taking place outside the floodplain. The evaluation of alternatives to the proposed action as discussed in Step 3, provides a better opportunity to explore the range of possibilities for avoiding adverse impacts to or within the floodplain than the more narrowly focused concepts of minimization, restoration and preservation discussed in Step 5. For example, the overall costs involved in locating a highway interchange, sewer interceptor line, airport facility, etc., at a location less directly affecting the floodplain could be less than the costs incurred in attempting to minimize the impacts of the proposed action and to restore and preserve floodplain values.

4.B. Lives and Property

After determining that a proposed action is in the base floodplain, the risk to lives and property involved in using that site must be determined. This requires an understanding of the magnitude and consequences of flooding that can be expected.

4.B.1. NATURE OF HAZARD AND RISK

Two basic types of floods are used in determining flood hazards: observed or historic floods and probability floods.

Historic Floods: Often these can be the basis for deciding whether a proposed site is in a hazardous area. However, the fact that a certain level of flooding has been observed indicates little about how floods are likely to occur in the future. Even where records extend over a long period of time,

the highest observed flood must not be used as the only guide for decision-making. With very few exceptions, flooding at any site can be expected to reach higher levels than those previously recorded because larger storms, urbanization, flood plain encroachment, or other factors affect flooding.

Probability Floods: These are statistically derived floods. The one percent chance (100-year or base) flood is the term which describes the magnitude of flooding used by FIA as the minimum acceptable level to which a community must regulate the floodplain in order to qualify for the National Flood Insurance Program. As stated previously, this magnitude flood has a one percent chance of being exceeded in any one year period. The likelihood of exceeding the one percent chance flood magnitude increases with time periods longer than one year. For example, the probability is about one in four that the one percent chance flood will be exceeded during the life of a 30-year mortgage.

Large floods occur each year in many parts of the United States. No part of the country is immune from large floods. Consequently, it has become standard practice for agencies dealing with flood problems to calculate elevations of a greater flood to indicate the range of flooding which can and will occur.

4.B.2. HIGH HAZARD AREAS

High hazard areas are those portions of riverine and coastal floodplains nearest the source of flooding. These are the frequently flooded areas that become arenas of major flood dynamics during large floods. Here, floodwaters exert their maximum pressures, erosion is greatly accelerated and loss potential is increased. Additionally, these are the areas of coastal and riverine floodplains within which many of the most critical floodplain values are concentrated. In riverine situations, the high hazard area is that portion of the floodplain where impedance to flood flow resulting from man's occupancy can increase flood heights and consequently the area subject to flooding. In coastal floodplains, the high hazard area is usually confined to the beach area in front of high bluffs or the crest of primary or foredunes, where wave impact is the most significant inducing factor. In light of the high loss potential and the likelihood of significant adverse effects to floodplain values associated with the conduct, support or allowance of actions in these portions of the floodplain, the agencies must rigorously apply the Order's charge to avoid these areas.

4.B.3. EVALUATION OF FLOOD HAZARD

Evaluation procedures must be established in writing by all agencies.

This evaluation serves to express clearly the hazard involved and provides the basis for carrying out the succeeding phases of the analysis. Key questions which must be addressed by the agencies in establishing their regulations and procedures for the evaluation of flood hazard include the following:

- Is the proposed action to be located in the floodway portion of the riverine floodplain, or the coastal high hazard area?
- Is the proposed action in a flood-fringe area such as the flood-fringe portion of a riverine floodplain or the backwater areas of a coastal floodplain?
- Is the flood hazard aggravated by the presence of, or potential for, destructive velocity flows, flood-related erosion, subsidence or sinkholes, or other special problems?
- Is there a combination of flood sources present which may flood simultaneously in the area (e.g., river and ocean, or shallow overland runoff and river, etc.)?

4.C. Natural and Beneficial Floodplain Values

Water and the adjacent floodplain exist in nature in a state of dynamic equilibrium. If one part of a coastal or riverine system is disturbed, the entire system usually readjusts toward a new equilibrium. The environmental effects of this readjustment may affect areas far from the original site of the disturbance and can last for decades. Thus, floodplain actions must be viewed with caution and a careful assessment made of their impact on natural and beneficial floodplain values.

Floodplains in their natural or relatively undisturbed state serve water resources values (natural moderation of floods, water quality maintenance, and groundwater recharge), living resource values (fish, wildlife, and plant resources), cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation), and cultivated resource values (agriculture, aquaculture, and forestry).

4.C.1. WATER RESOURCES

Floodplains provide for the natural storage of surface and ground waters and the natural improvement of water quality.

Natural Moderation of Floods: The characteristics of the floodplain and of flooding are closely interdependent. Floods shape floodplain topography, soils, and ecology. In turn, the physical characteristics of the floodplain shape flood flows. Except for some steep valley and coastal bluff situations, naturally vegetated floodplains can provide a broad area to spread and slow floodwaters, thereby reducing ve-

locities and flood peaks. Stream meander, dune formation in coastal areas and other natural processes which reduce the force of floodwaters are also accommodated in undisturbed floodplains.

Floodplain encroachment modifies these processes. The effects of such modification are complex and not fully understood. Although in some cases encroachments may interact with natural processes to aid in the reduction of flood forces, their predominant effect has been to aggravate the flood hazard.

In coastal floodplains natural barriers exist in the form of sand dunes and certain vegetation, e.g., mangrove stands, which reduce the impact of high tides and storm surges. Alteration or removal of the barriers themselves, or the vegetative and drainage systems which support them, reduces or eliminates their role in the reduction of flood forces. In addition, excessive withdrawal of groundwater may result in land subsidence thereby increasing flood depths and exposing greater areas to flooding.

Water Quality Maintenance: Floodplain vegetation functions in maintaining the physical and chemical integrity of the water that ultimately supports biological communities. Runoff is slowed by vegetation, allowing the water to deposit not only sediments originating on land but also those scoured from the channel bank and bed. Sediment deposition may add rich nutrients to the floodplain soil and keeps sediment-associated pathogens from the water.

However, siltation can destroy biological communities supported on the floodplain because it contributes to eutrophication (nutrient overloading), decreased dissolved oxygen, increased water temperature, and serious impairment of photosynthetic productivity. Vegetation shades stream banks and decreases daily water temperature fluctuations thereby alleviating temperature stress to the biota. Vegetation slows the flow of water and provides slack waters that give the aquatic biota a greater chance to survive flooding. In addition, floodplain storage and vegetation reduces siltation in downstream reservoirs.

Groundwater Recharge: An additional value of floodplain vegetation's role in slowing runoff is in groundwater recharge. Slowing the floodwater allows it to infiltrate through the generally porous floodplain soil. Base stream-flow and the level of standing water bodies is regulated naturally by groundwater. During periods of excessive precipitation, runoff enters the groundwater system as well as stream channels and standing water bodies, thereby reducing peak flows; during the dry season, water generally flows from the groundwater system into surface waters, augmenting low flows.

4.C.2. LIVING RESOURCES

The Nation's coastal and riverine floodplains support large and diverse populations of flora and fauna which represent valuable, renewable resources of great importance to man.

The floodplain is biologically very productive because it is here that land and water meet and the elements of both terrestrial and aquatic habitats interact. For example, unspoiled tidal marshes rank well above intensively farmed croplands in the magnitude and diversity of biological productivity. Marsh-rimmed estuaries and adjacent floodplains are vital to marine fisheries as breeding, nursery, and feeding grounds. Inland ponds, pot-holes, marshes and other wetland areas may provide highly important habitat for waterfowl and other wildlife.

Fish and wildlife resources are highly susceptible to man-induced disruption of the floodplain because of their high sensitivity to the resulting impacts. For example, drainage of wetlands, channelization of natural water courses, clearing of vegetation, especially bottomland forests, all have short and long term indirect impacts on plant and animal communities. Other changes that limit food, water supplies, or protective cover have similar effects. Modification of the floodplain at one location can affect living resources elsewhere on the floodplain.

4.C.3. CULTURAL RESOURCES

Floodplains contain cultural resources important to the Nation and to individual localities. They provide many cultural values if left in their natural state. Because native American settlements and early cities were located along coasts and rivers for access to water transportation, supply, and power, floodplains include most of the Nation's earliest archeological and historical sites. In addition to cultural richness, floodplains may be valuable sources for scientific research. For example, because they may contain unique habitats, they are ideal areas for ecological study. Floodplains are used for open space and green belt parks in cities to vary the pattern of the urban scene, to absorb noise, to clean air, to lower air temperatures, and to serve as nature centers and outdoor experience labs. Floodplains are often attractive areas, a base for recreation (hiking and camping), and a base for water-oriented sports such as boating and swimming. In addition, floodplain wildlife resources can be managed for recreational hunting and fishing. Where they remain in essentially pristine condition, floodplains can be valued as a part of the "wilderness experience" so important to the American Culture.

4.C.4. AGRICULTURAL, AQUACULTURAL, AND FORESTRY RESOURCES

Floodplains generally provide excellent resources for agricultural, aquacultural and forestry production.

The natural processes of sediment renewal which take place in floodplains replenish soil and their nutrients. Thus with proper management, floodplain soils generally require less artificial fertilization than upland sites. Level or gently rolling floodplain terrain facilitates agricultural operations. Surface and groundwater sources are usually easily accessible. Well-drained, deep soil suitable to most economic crops are often prevalent in the floodplain. Soils well suited to specialty crops are also found on floodplains (e.g., the poorly drained areas of the Sacramento Valley where rice is a major crop).

However, certain agricultural uses and practices in the floodplain may adversely affect natural floodplain values. They may be incompatible with wildlife production; may induce aggravated erosion and sedimentation; or may result in the drainage of inland and tidal wetlands to increase the amount of arable land. Excessive fertilization and poor feedlot practices can result in nutrient pollution in local water bodies. Thus, proper management practices are essential where agriculture is proposed in sensitive floodplain areas.

The use of floodplain areas for aquacultural operations has grown into a viable industry producing a wide variety of aquatic crops. Aquaculture is subject to similar limitations to those noted for agriculture, but if properly managed, it can be compatible with the natural values of floodplains, and may offer opportunities for the restoration of damaged floodplain values.

Many of the Nation's valuable forest resources are found within floodplains. Bottomland hardwoods and other riparian species (those which can only flourish in close proximity to water) are important to the timber industry and the overall economy of the country. Thus, sound management of forest resources in the floodplain is also essential.

STEP 5—MINIMIZE, RESTORE, PRESERVE

The requirements of the Order to minimize, restore, and preserve apply if a proposed action will result in harm to or within the floodplain. The term "harm," as used in the context of the Order, applies to both lives and property (Step 4.B.), and natural and beneficial floodplain values (Step 4.C.). The concept of minimization (Step 5.A.), applies to harm. The concept of restoration and preservation (Step 5.A.) applies only to floodplain values. Step 5.C. discusses some mechanisms

which may be applied to achieve these three requirements.

5.A. Minimize

Minimize is a demanding standard and requires the agency to reduce harm to the smallest possible degree, thus establishing a far more rigorous standard than other terms which often are used in similar contexts, e.g., alleviate (to lessen), mitigate (to moderate the severity of), ameliorate (to improve), etc. From the standpoint of lives and property, potential harm to or within the floodplain must be reduced to the smallest possible amount or degree. The goal is to avoid increasing the flood loss potential associated with the level of the base flood prior to the proposed action. Where a critical action is proposed (see Step 2.C.) the goal is associated with higher levels of flooding. Similarly, from the standpoint of floodplain values, minimization requires that harm to such values be reduced to the smallest possible amount or degree. The Order's requirement to minimize potential harm applies to (1) the investment at risk, or the flood loss potential of the action itself, (2) the impact the action may have on others, and (3) the impact the action may have on floodplain values. The agencies must specify in their regulations and procedures, how actions will be designed and modified to minimize harm to or within the floodplain. (Also see page I-4 on the requirements to minimize harm.)

5.B. Restore and Preserve

In the context of this Order, "restore" focuses upon conditions existing as a result of prior actions, while "preserve" focuses upon the impacts of a proposed action.

Restore means to reestablish a setting or environment in which the natural and beneficial floodplain values can again operate. Where floodplain values have been degraded by past actions, the agency must identify, evaluate, and implement measures to restore the values diminished or lost. The functions of many of the Nation's degraded floodplains can be partially or fully restored through remedial action.

Preserve means to prevent modification to the natural floodplain environment, or to maintain it as closely as possible to its natural state. This term applies foremost to floodplains showing little or no disruption by man. If an action will result in harm to or within the floodplain, the agency must design or modify the action to assure that it will be carried out in a manner which preserves as much of the natural and beneficial floodplain values as is possible.

5.C. Methods to Minimize, Restore and Preserve

A wide range of methods have been developed over time to minimize harm to lives and property from flood hazards. In the recent past, other methods directed toward minimizing harm to natural and beneficial environmental values, including those associated with the floodplain, have also been developed. The technology and methodologies for achieving restoration and preservation are not as well documented nor understood, but currently are receiving increasing attention. The tools and approaches, which are directed toward attaining these three goals of the Order, should be considered and applied at all stages of a proposed action, as appropriate, e.g., during the planning, design, construction, operation and maintenance of a proposed project.

Although the Order emphasizes avoidance of the floodplain as the preferred manner for meeting its intent to avoid harm to or within the floodplain, the following examples are provided as additional guidance. The agencies should not be limited by the scope and level of detail of these examples.

5.C.1. NATURAL MODERATION OF FLOODS

- Minimize floodplain fills and actions that require fills such as construction of dwellings, factories, highways, etc.
- Require that structures and facilities on wetlands provide for adequate flow circulation.
- Use minimum grading requirements and save as much of the site from compaction as possible.
- Relocate nonconforming structures and facilities out of the floodplain.
- Return site to natural contours.
- Preserve free natural drainage when designing and constructing bridges, roads, fills, and large built-up centers.
- Prevent intrusion on and destruction of beach and estuarine ecosystems and restore damaged dunes and vegetation.

5.C.2. WATER QUALITY

- Maintain wetland and floodplain vegetation buffers to reduce sedimentation and delivery of chemical pollutants to the water body.
- Control agricultural activities to minimize nutrient inflow.
- Control urban runoff, other storm water, and point and nonpoint discharges.
- Control methods used for grading, filling, soil removal and replacement, etc., to minimize erosion and sedimentation during construction.

- Prohibit the location of potential pathogenic and toxic sources on the floodplain, such as sanitary land fills and septic tank, etc.

5.C.3. GROUNDWATER RECHARGE

- Require the use of previous surfaces where practicable.
- Design construction projects for runoff detention.
- Dispose of spoils and waste materials so as not to contaminate ground or surface water or change land contours.

5.C.4. LIVING RESOURCES

- Identify and protect wildlife habitat and other vital ecologically sensitive areas from disruption.
- Require topsoil protection programs during construction.
- Control wetland drainage, channelization, and water withdrawal.
- Reestablish damaged floodplain ecosystems.
- Minimize tree cutting and other vegetation removal.
- Design floodgates and seawalls to allow natural tidal activity and estuarine flow.

5.C.5. CULTURAL RESOURCES

- Provide public access to and along the waterfront for recreation, scientific study, educational instruction, etc.
- Locate and preserve from harm historical cultural resources; consult with appropriate governmental agency or private group.

5.C.6. AGRICULTURAL RESOURCES

- Minimize soil erosion on cropped areas within floodplains.
- Control use of pesticides, herbicides, and fertilizer.
- Limit the size of fields, promote fence rows, shelter belts and strip-cropping.
- Strengthen water bank and soil bank type programs to be consistent with alternate demands for the use of agricultural land.
- Minimize irrigation return flows and excessive applications of water.

5.C.7. AQUACULTURAL RESOURCES

- Construct impoundments to minimize any alteration in natural drainage and flood flow. Existing natural impoundments such as oxbow lakes and sloughs could be utilized under proper management.
- Limit the use of exotic species, both plant and animal, to those organisms already common to the area or those known not to compete unfavorably with existing natural populations.

- Discourage mechanized operations. Machinery such as dredges, weeders, and large-scale harvesting equipment may lead to environmental problems such as sediment loading to adjacent watercourses.

5.C.8. FORESTRY RESOURCES

- Control the practice of clear-cutting, depending upon the species harvested, topography, and location.
- Complement state law governing other aspects of harvest operations; proximity to watercourses, limits on roadbuilding, equipment intrusions, etc.
- Include fire management in any overall management plans. Selective fire use may reduce the probability of major destructive fires.
- Require erosion control plans on all timber allotments, roads, and skidways.

Implementing the above mechanism may be achieved through many types of administrative measures, depending in part upon the agency programs and authority.

Some examples are:

- Engineering and realty section standards and procedures.
- Contract, grant, loan, permit, and license stipulations.
- Application of appropriate encumbrances during land conveyance.
- Information transfer and education of employees and public.
- Delegation of responsibility for floodplain activities to a specific office with sufficient authority to play an active leadership role both within and outside of the agency.
- Systematic review of existing agency programs to identify opportunities for floodplain value preservation and restoration.
- Site surveys to identify opportunities for floodplain preservation and restoration; and
- Provision of coordination methods within and outside of agency to enable the implementation of unified floodplain management measures.

STEP 6—REEVALUATE ALTERNATIVES

Having identified the impacts the proposed action would have on the floodplain (Step 4), methods to minimize these impacts, and opportunities to restore and preserve floodplain values (Step 5); the proposed action should not be reevaluated. For proposed actions in the base floodplain, the reevaluation should consider if the action is still feasible at this site. If not, consider limiting the action to

make non-floodplain sites practicable. If neither is acceptable, the alternative is no action. If the proposed action is outside the base floodplain but has impacts which cannot be minimized (Step 5), consider whether the action can be modified or relocated to eliminate or reduce the identified impacts, or if the no action alternative should be chosen.

The reevaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed action located in and out of the floodplain. The comparison should emphasize floodplain values. However, a site out of the floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.

6.A. Location in the Base Floodplain

In determining whether the proposed action will be located in the base floodplain, the agency must ascertain that the floodplain site is the only practicable alternative. Further, the importance of the location, must clearly outweigh the requirements of the Order to:

- Avoid direct or indirect support of floodplain development wherever there is a practicable alternative;
- Reduce the risk of flood loss;
- Minimize the impact of floods on human safety, health and welfare; and
- Restore and preserve the natural and beneficial floodplain values.

6.B. Limit Action

If an action proposed to be located in the floodplain cannot satisfy the four requirements in Step 6.A., consider reducing the criteria for the proposed action. This would lower the threshold for what constitutes a practicable alternative. New alternative actions and sites could then be identified and previously rejected ones reevaluated for practicability based on scaled-down expectations.

6.C. No Action

If neither of the above courses of action are feasible, the agency should reevaluate the no action alternative.

STEP 7—FINDINGS AND PUBLIC EXPLANATION

If reevaluation results in the determination that there is no practicable alternative to locating in or impacting the floodplain, a statement of findings and public explanation must be provided for the proposed action. Each agency should explain how any tradeoff analysis was conducted by the agency in making its findings. Some existing agency public notice procedures may already satisfy part of the

requirements of the Order (Section 2(a)(2)(ii)) through such mechanisms as OMB A-95 and NEPA procedures, or other public involvement programs. However, agency procedures must incorporate the development and issuance of a written statement of findings and public explanation which includes:

1. A description of why the proposed action must be located in the floodplain;
2. A description of all significant facts considered in making the determination including alternative sites and actions;
3. A statement indicating whether the actions conform to applicable State or local floodplain protection standards;

In addition, and in keeping with the concept of the overall public involvement process discussed in Step 2, the following items should be included in the statement of findings and public explanation:

4. A statement indicating why the NFIP criteria are demonstrably inappropriate for the proposed action;
5. A provision for publication in the FEDERAL REGISTER or other appropriate vehicle;
6. A provision for a brief comment period prior to agency action (15 to 30 days);
7. A description of how the activity will be designed or modified to minimize harm to or within the floodplain;
8. A statement indicating how the action affects natural or beneficial floodplain values;
9. A statement listing other involved agencies and individuals.

7.A. Interagency Notice

Certain public review procedures already exist with which the Order's review requirements are to be integrated.

7.A.1. PROGRAMS SUBJECT TO OMB CIRCULAR A-95

For programs subject to OMB Circular A-95, the agency shall send a notice, not to exceed three pages in length including a location map, to the State and areawide A-95 clearinghouse for the areas affected. The notice shall include (as a minimum) 1, 2, and 3 from above. It would also be helpful to the reviewer, and consistent with the intent of the Order, to include items 4 through 9.

7.A.2. OTHER PROGRAMS

For programs not subject to OMB-95 review procedures, agencies must develop procedures to provide for similar notice and explanation of why a proposed action is to be located in a floodplain. This notice must be circulated among agencies and also made available to the public for review.

7.B. Actions Subject to NEPA

For agency actions subject to NEPA which take place in the base floodplain, the public review requirements discussed above as set out in Section 2(b) of Executive Order 11514, as amended, should include the nine items listed in the introduction to this step. Section 2(a)(4) of the Order requires the same public notice procedures for Federal actions in the floodplain even though impacts are not significant enough to require the preparation of an environmental impact statement (EIS) under Section 102(2)(C) of NEPA (Public Law 91-190).

Under NEPA procedures, a final EIS is circulated for public and interagency review and comment. A minimum of 30 days is required to allow a review and to receive responses from the public and governmental agencies. These comments must then be considered. The findings must be made in conjunction with a final agency decision, and the formal statement of findings required by the Order must be issued prior to initiating the proposed action. A final EIS should explain, if appropriate, why the responsible official has recommended or why the agency might support an action located in a floodplain.

7.C. All Actions Located in the Base Floodplain

A statement of findings (including the explanatory information discussed in 7.A.) must be issued by the agency head in compliance with Section 2(a)(2) of the Order. This applies to all proposed actions located within or impacting the floodplain, including proposed actions whose impacts are not significant enough or are not otherwise required to complete an EIS.

STEP 8—IMPLEMENT ACTION

With the conclusion of the decision-making process described in Steps 1-7, the proposed action can be implemented. However, there is a continuing responsibility for insuring that the action is carried out in compliance with the Order. This is especially important for projects with long-term operation, maintenance and repair programs such as reservoirs or waste treatment facilities.

APPENDIX A—FLOODPLAIN SERVICES AVAILABLE FROM LISTED AGENCIES

DEPARTMENT OF AGRICULTURE Soil Conservation Service (SCS)

As part of the SCS's Floodplain Management Assistance Program each State Conservationist carries out cooperative Flood Hazard Analyses upon request of local governments, in accordance with a Joint Coordination

Agreement with the responsible State agency. SCS flood hazard reports contain floodplain delineations on aerial photomaps, flood profiles, and discharge and floodway data. In addition, SCS provides continuing technical assistance to local governments, after completion of a flood hazard or insurance study, to help them implement their local floodplain management program. Each SCS State Office has additional flood elevation and related floodplain data on file from Watershed Project and Resource and Conservation Development Project investigations, River Basins Surveys, and detailed soil surveys. If the State or field office address is not known contact: Chief, Floodplain Management and Special Projects Branch, River Basins Division, SCS: P.O. Box 2890, Washington, D.C. 20013. Telephone 202-447-7697.

DEPARTMENT OF THE ARMY Corps of Engineers

The Corps' separately funded Flood Plain Management Services Program has units in 47 District and Division offices located throughout the country which provide information and assistance in flood-related matters. They maintain a file of floodplain information, survey, and other reports containing floodplain delineations, flood profiles, and data on flood discharges and hydrographs. Each office provides: (1) interpretations as to flood depths, velocities and durations from existing data; (2) develops new data through field and hydrologic studies for interpretation; and (3) provides guidance on adjustments to minimize the adverse effects of floods and floodplain development. If the nearest District office address is not known, contact Chief, Flood Plain Management Services (FPMS), U.S. Army Corps of Engineers, HQDA (DAEN-CWP-F), Washington, D.C. 20314, telephone 202/693-1691, or the nearest Division office.

North Atlantic Division, New York, NY, 212-264-7483
South Atlantic Division, Atlantic, GA, 404-221-6702
Southwestern Division, Dallas, TX, 214-767-2310
South Pacific Division, San Francisco, CA, 415-556-5660
Lower Mississippi Valley Division, Vicksburg, MS, 601-638-1311 Ext. 385
Missouri River Division, Omaha, NB, 402-221-7270
North Central Division, Chicago, IL, 312-353-6531
Ohio River Division, Cincinnati, OH, 513-684-3012
North Pacific Division, Portland, OR, 503-221-3823
New England Division, Waltham, MA, 617-894-2400 Ext. 545
Pacific Ocean Division, APO San Francisco, 808-438-2883

DEPARTMENT OF COMMERCE NOAA-National Weather Service

Floodplain information and interpretative assistance for specific points on larger rivers of the United States can be obtained from the National Weather Service. Information available consists of the flood stage for selected communities (the stage above which flood damage occurs), and historical flood information for that location. An annual publication entitled *River Forecasts Provided by the National Weather Service*, lists the points for which data are compiled and includes that flood stage at each point and the current year's maximum stage as well as the maximum state of record. This publication is for sale by the National Climatic Center of NOAA, Asheville, North Carolina 28801. The National Weather Service provides flood forecasts and warnings on larger rivers and provides flash flood warnings on smaller streams. Interested communities are assisted in establishing Flash Flood Warnings Systems.

For information and assistance contact the following National Weather Service Regional Offices:

Eastern Region, Garden City, NY, 212-995-8639
Southern Region, Ft. Worth, TX, 817-334-2674
Central Region, Kansas City, MO, 816-374-3229
Western Region, Salt Lake City, UT, 801-524-5137
Alaskan Region, Anchorage, AK, 907-265-4716
Pacific Region, Honolulu, HA, 808-546-5680

Storm surge frequency information and interpretative assistance are available for the Gulf of Mexico and Atlantic coasts. Studies have been completed for the Gulf of Mexico coast from the Alabama-Florida border to southern Florida; and along the Atlantic coast from southern Florida to Cape Henlopen, the southern boundary of Delaware Bay. The National Weather Service also provides warnings of storm surges associated with tropical and extratropical storms. For storm surge frequency information and interpretative assistance contact: Chief, Water Management Information, NWS Office of Hydrology (W21), 8060-13th Street, Silver Spring, MD 20910. Telephone: 301-427-7543.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Administration

The civil engineer at the 78 local or regional offices has specific knowledge of flood elevations for many urban locations and can provide knowledge of material available to assist in making a determination of floodplain location. The location of the nearest office may be obtained from one of HUD's 10 re-

gional offices or by contacting: Federal Housing Administration, 451 7th Street SW., Washington, D.C. 20410. Telephone: 202-755-5111.

Federal Insurance Administration

Request for insurance maps or studies should be addressed as follows:

(1) *FIA Mailing List*. Copies of new or revised FHBMs, FIRMs and FIS reports are distributed upon publication to organizations on the FIA mailing list. In requesting to be added to the mailing list, the agency should specify the number and distribution of maps required (for example, two copies of each map for Maine and New Hampshire communities to Boston regional office). Mailing list inquiries should be sent to:

Engineering Division, Federal Insurance Administration, Room 5150, HUD Building, 451 7th Street, SW., Washington, D.C. 20514. Telephone: 202-755-7510.

(2) *Requests for a Single Map*. Request(s) for a previously published FIBM or FIRM may be made by calling FIA's toll free number 800-424-8872 from outside of the Washington, D.C. area, or 755-9096 from within the Washington, D.C. area.

(3) *Flood Insurance Study Reports*. These detailed engineering reports are distributed to those on the mailing list when a FIRM is initially published. However, because there has not been a recurring demand for this information, FIA does not have a system for supplying copies to interested organizations at a later date. Copies are available at: (1) FIA's Engineering Division (address above); (2) FIA Regional Offices (see list below) and (3) Chief Executive Officer of the local community within which the action is proposed to be carried out.

Region I—Boston, 617-223-2616
Region II—New York City, 212-264-4734
Region III—Philadelphia, 215-597-9581
Region IV—Atlanta, 404-257-2391
Region V—Chicago, 312-353-0757
Region VI—Dallas, 214-749-7412
Region VII—Kansas City, 816-374-2161
Region VIII—Denver, 303-837-5041
Region IX—San Francisco, 415-556-3543
Region X—Seattle, 206-442-1026

Requests for floodplain management services, and a list of experienced consulting engineers may be obtained from the Director, Floodplain Management Division, Federal Insurance Administration 451 7th Street, S.W., Washington, D.C. 20410. Telephone 202-426-1891.

DEPARTMENT OF THE INTERIOR Geological Survey

User Assistance Centers at 48 locations can provide (a) factual information on flood peaks and discharges, flood depths, and velocities, profiles of the water surface during major floods, areas inundated during major floods,

time-of-travel of flood wave, and sediment transport data; (b) interpretive information regarding flood-frequency relations, estimates of 10-, 50-, 100-, and 500 years flood discharges, computed water surface profiles, and flood-prone areas delineated on topographic maps, in most communities in the United States, with known flood problems; and (c) assistance in minimizing flood losses by quickly identifying areas of potential flood hazards. If the User Assistance Center address is not known, contact: Chief, Surface Water Branch, Water Resources Division, U.S. Geological Survey, National Center, Reston, VA. 22092. Telephone: 703-860-6837.

Bureau of Land Management

The Bureau of Land Management (BLM) has District Offices located in the 11 Western States and Alaska involved in land use planning for public lands. Floodplain protection and flood prevention is a significant element in the BLM planning system, and each District Office maintains a file of existing floodplain maps which are available for public inspection. If the location of the District Office is not known, contact: Bureau of Land Management, U.S. Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240. Telephone: 202-343-5717.

Bureau of Reclamation

The flood hydrologist at the seven regional offices has knowledge of flooding and flood elevation for related locations associated with Bureau projects and can provide interpretive assistance for existing data.

For information contact one of the seven regional or nearby project offices or the Flood Hydrology Section, U.S. Bureau of Reclamation, P.O. Box 25007, Denver Federal Center, Denver, CO. 80225. Telephone: 303-234-2035.

Fish and Wildlife Service

The Fish and Wildlife Service provides expertise on questions relating to fish, wildlife, and habitat resource, preservation, and maintenance. It functions through six regional, area and field offices. For information contact any of these offices, or the Fish and Wildlife Service, U.S. Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240. Telephone: 202-343-5715.

TENNESSEE VALLEY AUTHORITY

Activities in water resources are confined to portions of the seven States in the Tennessee Valley Watershed. Since 1953, TVA has conducted a program of floodplain management assistance to local governments. Reports have been published for more than 130 communities, and have provided

profiles and flood data to at least 70 others. Detailed information in files pertains to large floods which have occurred in the Valley since the 1930's, and in less detail, dating back to the large flood of 1867. TVA's Flood Plain Management Services Staff provides technical assistance to help those who propose developments in floodplains to use the floodplain wisely. Contact: Flood Plain Management Services, 100 Liberty Building, Tennessee Valley Authority, Knoxville, TN. 37902. Telephone: 615-632-4451.

DELAWARE RIVER BASIN COMMISSION

The Commission maintains a file of floodplain information, delineation and flood data studies prepared by the Commission, Federal agencies and others. Where data exist, assistance with interpretation will be provided. Contact: Head, Branch of Operations, Delaware River Basin Commission, P.O. Box 7360, West Trenton, N.J. 08628. Telephone: 609-883-9500.

SUSQUEHANNA RIVER BASIN COMMISSION

The Commission maintains a file of detailed hydrologic and hydraulic information for 245 basin communities studied under the National Flood Insurance Program for HUD. Limited additional hydrological data for other areas also is available. The Commission can provide general information and guidance on floodplain management measures. Contact: Chief, Planning and Operations, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA. 17102. Telephone: 717-238-0425.

STATES

Many (but not all) States have active floodplain management programs. They have on file or access to most floodplain information generated by Federal and State agencies, regional organizations, special districts and private consultants. State agencies are usually staffed and funded to: (1) coordinate floodplain management activities; (2) develop minimum standards for floodplain regulations; (3) assist local units of government (counties, cities, etc.) in developing floodplain management programs; and (4) interpret available floodplain information. For most States, the appropriate contact is the Department of Natural Resources or the Water Resources Division. At the substate level, regional agencies such as conservancy districts and multi-county planning agencies may be a source of floodplain data and interpretation.

APPENDIX B—RELATED PROGRAMS AND REFERENCES Publications

Useful information on many of the subjects discussed in this document is

found in the following publications, which describe programs and studies related to the objectives of Executive Order 11988:

"A Unified National Program for Managing Flood Losses," *House Document 465*, 89th Congress, 2nd Session. A report by the Task Force on Federal Flood Control Policy, August, 1966.

Rules and Regulations of the National Flood Insurance Program, 41-FR 207, Oct. 26, 1976, at CFR 1909, et seq. Copies of the rules and regulations can be obtained from the U.S. Department of Housing and Urban Development, Federal Insurance Administration, Washington, D.C. 20410.

Regulation of Flood Hazard Areas to Reduce Flood Losses. A 2-volume work published by the Water Resources Council in 1971-1972. It contains legal aspects of and draft legislation for riverine and coastal floodplain regulation programs of states and local governments.

Flood proofing Regulations, U.S. Army Corps of Engineers, June, 1972 (EP1165-2-314).

A unified National Program for Flood Plain Management, U.S. Water Resources Council, July, 1976.

A Perspective on Flood Plain Regulations for Flood Plain Management, U.S. Army Corps of Engineers, June, 1976 (EP1165-2-304).

Elevated Residential Structures, HUD, Federal Insurance Administration, September, 1976.

Relevant Legislative Authority and Statement of Congressional Purpose for Minimizing Floodplain Encroachment

There is a large body of Federal legislation relevant to preservation or restoration of floodplains. Some of the major items of legislation are listed below.

Title and Lead Agency

Water Resources Planning Act (42 USC 1962), WRC
Watershed Protection and Flood Prevention Act (16 USC 1001), SCS
River and Harbor Act of 1899 (33 USC 001), COE
Flood Control Act of 1944 (16 USC 460d, et al.), COE
Flood Disaster Protection Act of 1973 (42 USC 4001),
Federal Water Pollution Control Act Amendments of 1972 (33 USC 1251), EPA
Coastal Zone Management Act (16 USC 1451), OCZM
Surface Mining Control and Reclamation Act of 1977, OSM
"1890 Organic Act" of the National Weather Service (15 USC 311) NOAA
National Environmental Policy Act (42 USC 4321), CEQ
Wild and Scenic Rivers Act (16 USC 1271), NPS

National Trail Systems Act (16 USC 1241), NPS
 Fish and Wildlife Coordination Act (16 USC 661) Fish and Wildlife Restoration Projects (16 USC 777 and 669), FWS
 Endangered Species Act (16 USC 1531), FWS
 The Wilderness Act (16 USC 1131), Various Land and Water Conservation Fund Act (16 USC 4601), HCRS
 Antiquities Act of 1906 (16 USC 431), HCRS
 Archeological and Historic Preservation Act of 1974 (16 USC 469), HCRS

Agencies should consider reviewing this body of legislation, act by act, in light of the Order to uncover opportunities within their existing programs for protecting the natural and beneficial floodplain values under the powers of these acts as well as to uncover problem areas in meeting mandates (lack of guidance, ceiling, budgets, etc.)

APPENDIX C—E.O. 11988, FLOODPLAIN MANAGEMENT

Statement by the President

Accompanying E.O. 11988, May 24, 1977

The floodplains which adjoin the Nation's inland and coastal waters have long been recognized as having special values to our citizens. They have provided us with wildlife habitat, agricultural and forest products, stable ecosystems, and park and recreation areas. However, unwise use and development of our riverine, coastal, and other floodplains not only destroy many of the special qualities of these areas but pose a severe threat to human life, health, and property.

Since the adoption of a national flood control policy in 1936, the Federal Government has invested about \$10 billion in flood protection works. Despite substantial efforts by the Federal Government to reduce flood hazards and protect floodplains, annual losses from floods and adverse alteration of floodplains continue to increase.

The problem arises mainly from unwise land use practices. The Federal Government can be responsible for or can influence these practices in the construction of projects, in the management of its own properties, in the provision of financial or technical assistance including support of financial institutions, and in the uses for which its agencies issue licenses or permits. In addition to minimizing the danger to human and nonhuman communities living in floodplains, active floodplain management represents sound business practice by reducing the risk of flood damage to properties benefiting from Federal assistance.

Because unwise floodplain development can lead to the loss of human and other natural resources, it is simply a bad Federal investment and should be avoided. In order to avoid to the extent possible the long- and short-

term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, I have issued an Executive order on floodplain management.

E.O. 11988—Floodplain Management

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a) (1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on

the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loans or grants-in-aid programs that they administer. Agencies

shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance

those uses that are restricted under identified Federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended

(88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER.

The White House,
May 24, 1977.

APPENDIX D—E.O. 11990
PROTECTION OF WETLANDS
Statement by the President
Accompanying E.O. 11990

The Nation's coastal and inland wetlands are vital natural resources of critical importance to the people of this country. Wetlands are areas of great natural productivity, hydrological utility, and environmental diversity, providing natural flood control, improved water quality, recharge of aquifers, flow stabilization of streams and rivers, and habitat for fish and wildlife resources. Wetlands contribute to the production of agricultural products and timber, and provide recreational, scientific, and aesthetic resources of national interest.

The unwise use and development of wetlands will destroy many of their special qualities and important natural functions. Recent estimates indicate that the United States has already lost over 40 percent of our 120 million acres of wetlands inventoried in the 1950's. This piecemeal alteration and destruction of wetlands through draining, dredging, filling, and other means has had an adverse cumulative impact on our natural resources and on the quality of human life.

The problem of loss of wetlands arises mainly from unwise land use practices. The Federal Government can be responsible for or can influence these practices in the construction of projects, in the management of its own properties, and in the provisions of financial or technical assistance.

In order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, I have issued an Executive order on the protection of wetlands.

Executive Order 11990—Protection of
Wetlands

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in

order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

SEC. 7. As used in this Order;

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

SEC. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

The White House,
May 24, 1977.

APPENDIX E—E.O. 11514 PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Excerpts From E.O. 11514 (March 5, 1970), as Amended by E.O. 11991 (May 24, 1977), Secs. 2(g) and 3(h)

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. Policy. The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. Responsibilities of Federal agencies. Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the

quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall

be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purpose of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Sec. 3. Responsibilities of Council on Environmental Quality. The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for pro-

tecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

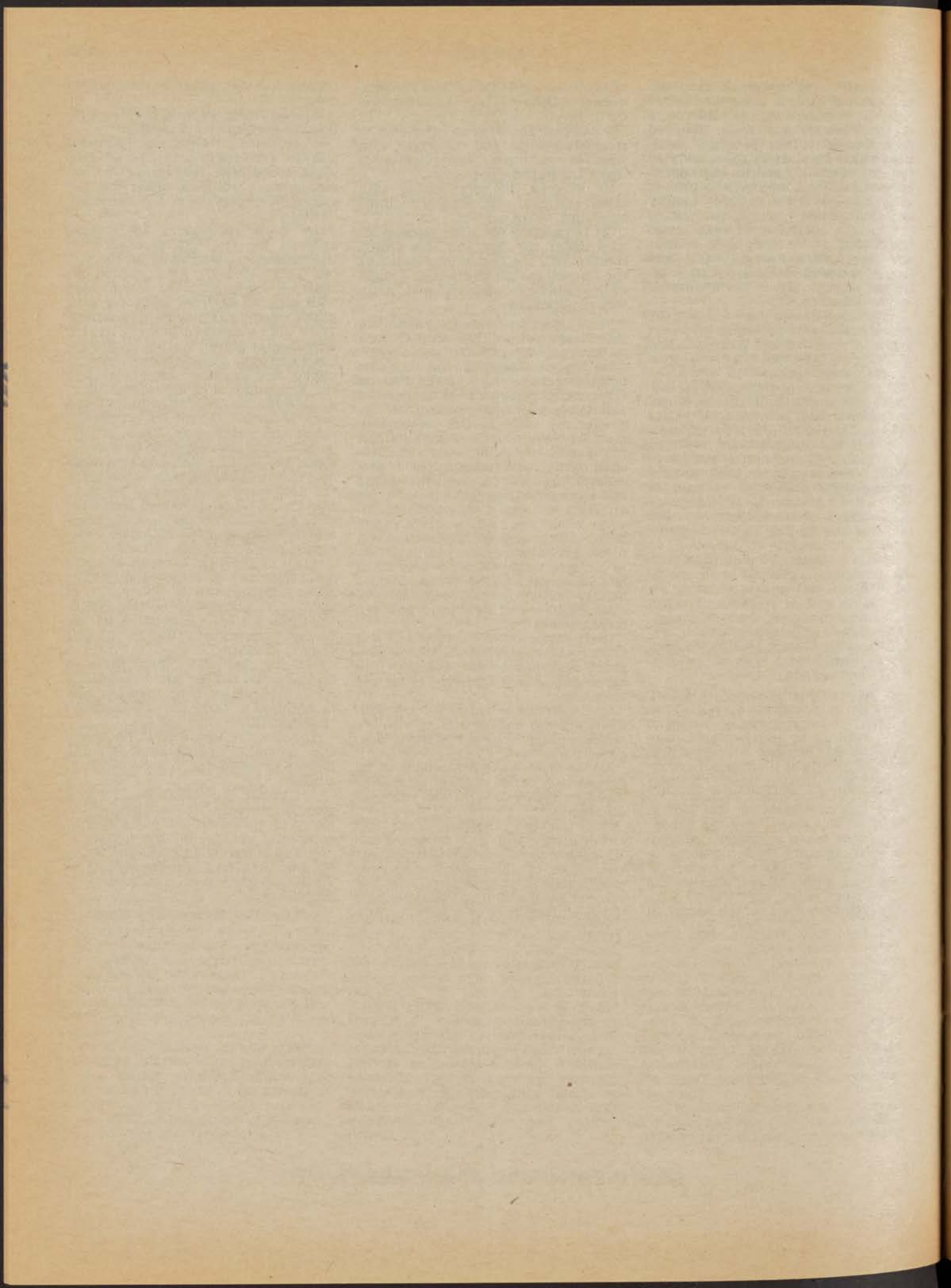
(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

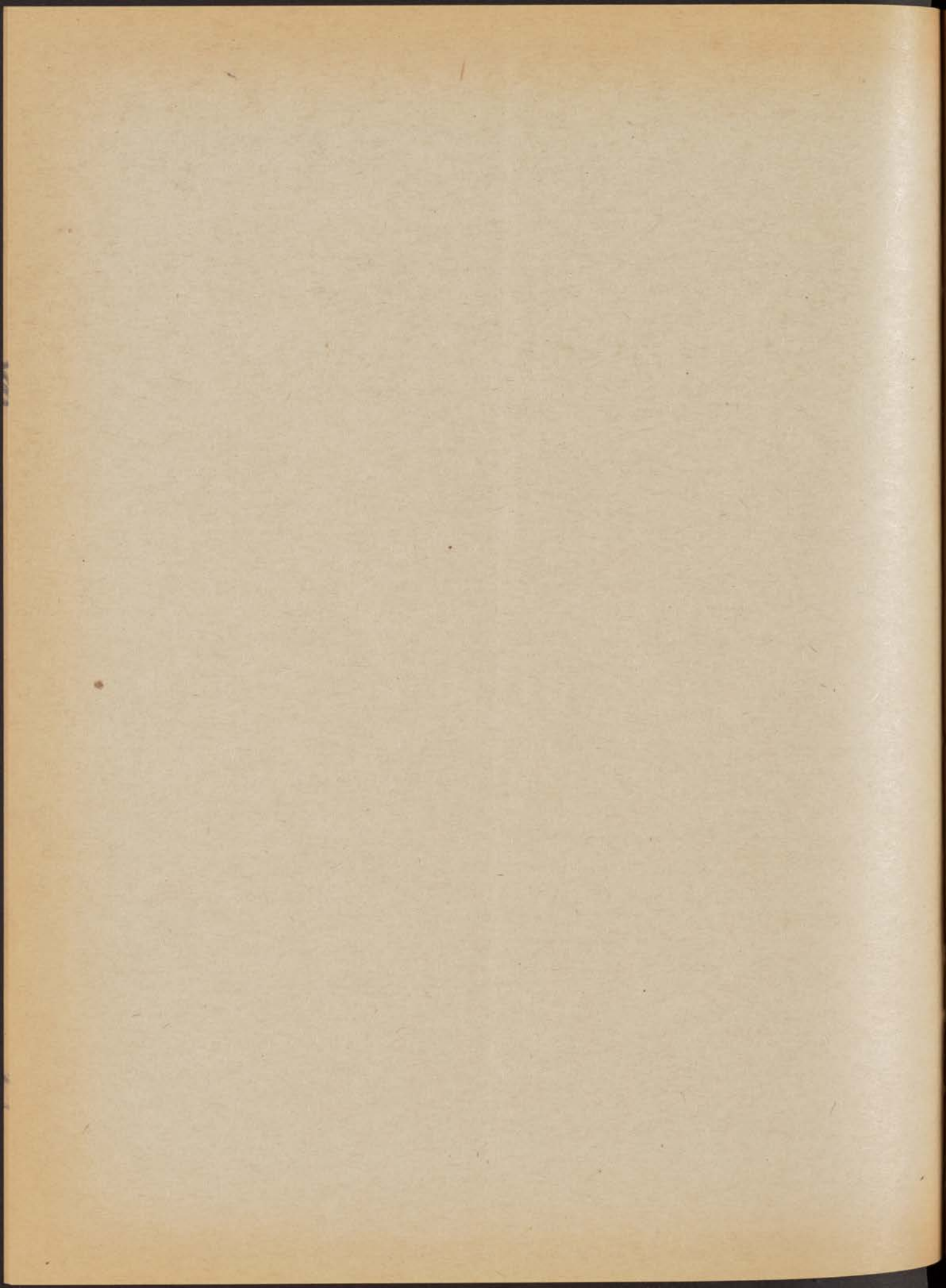
(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

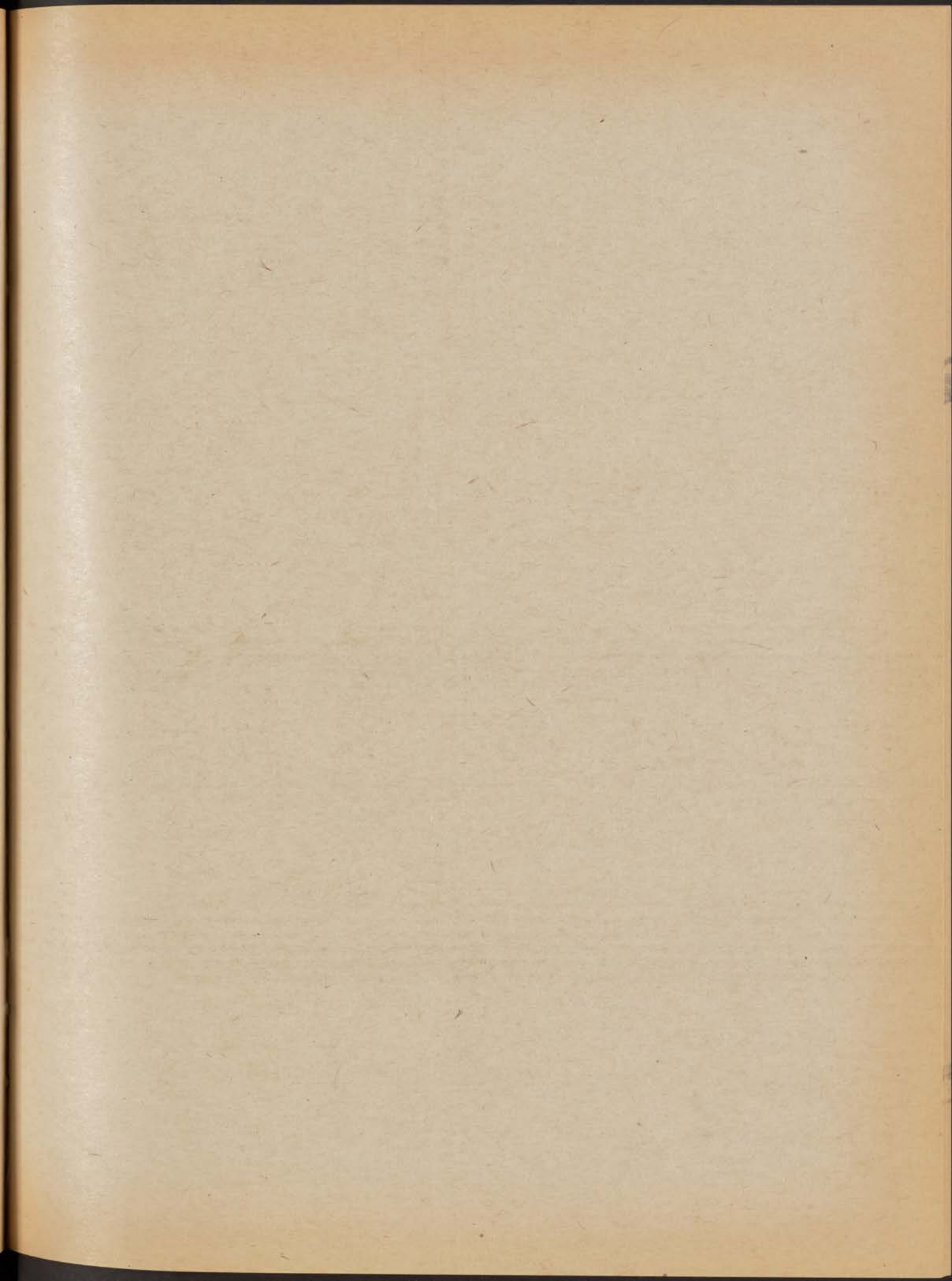
(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

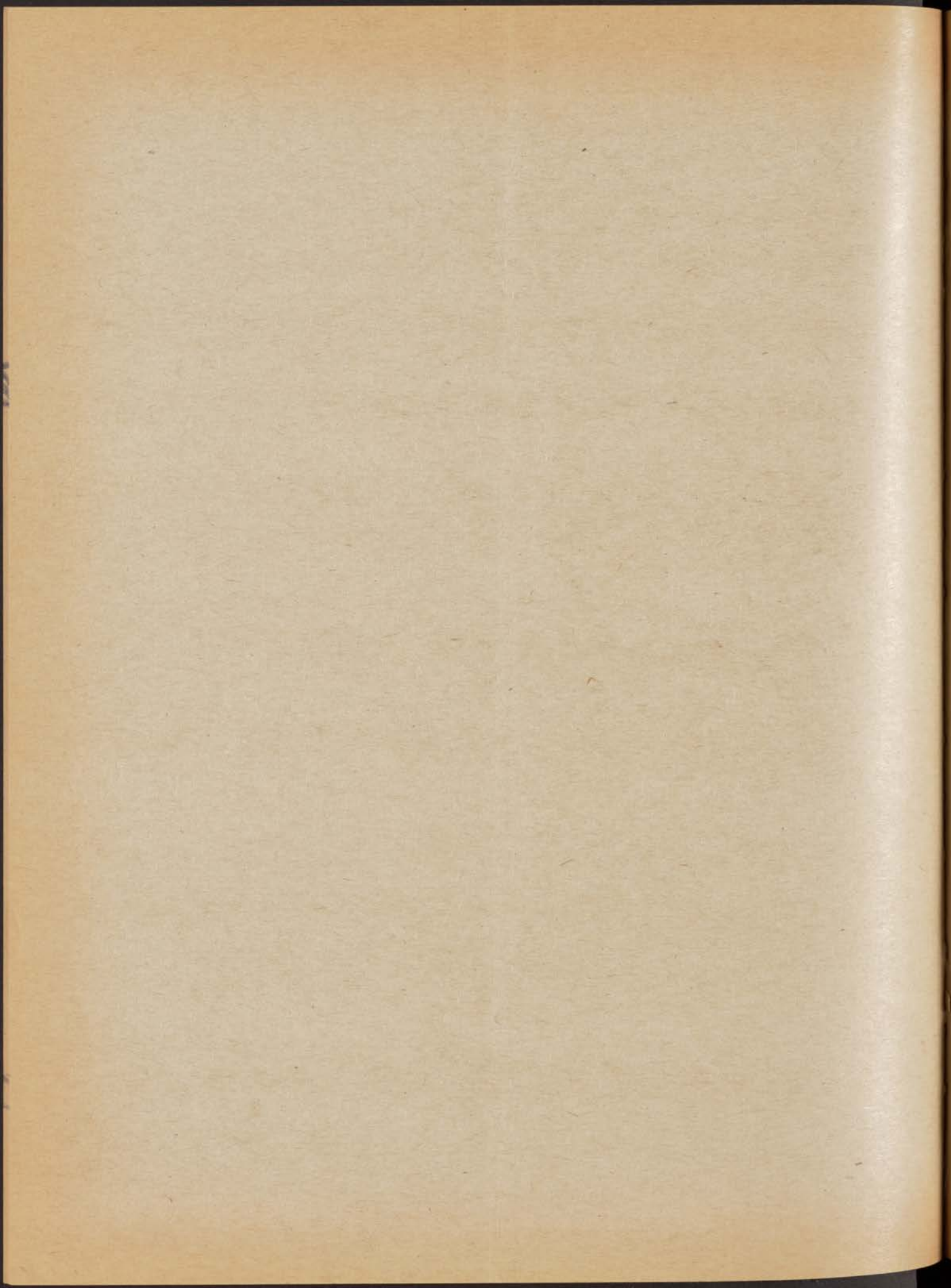
(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

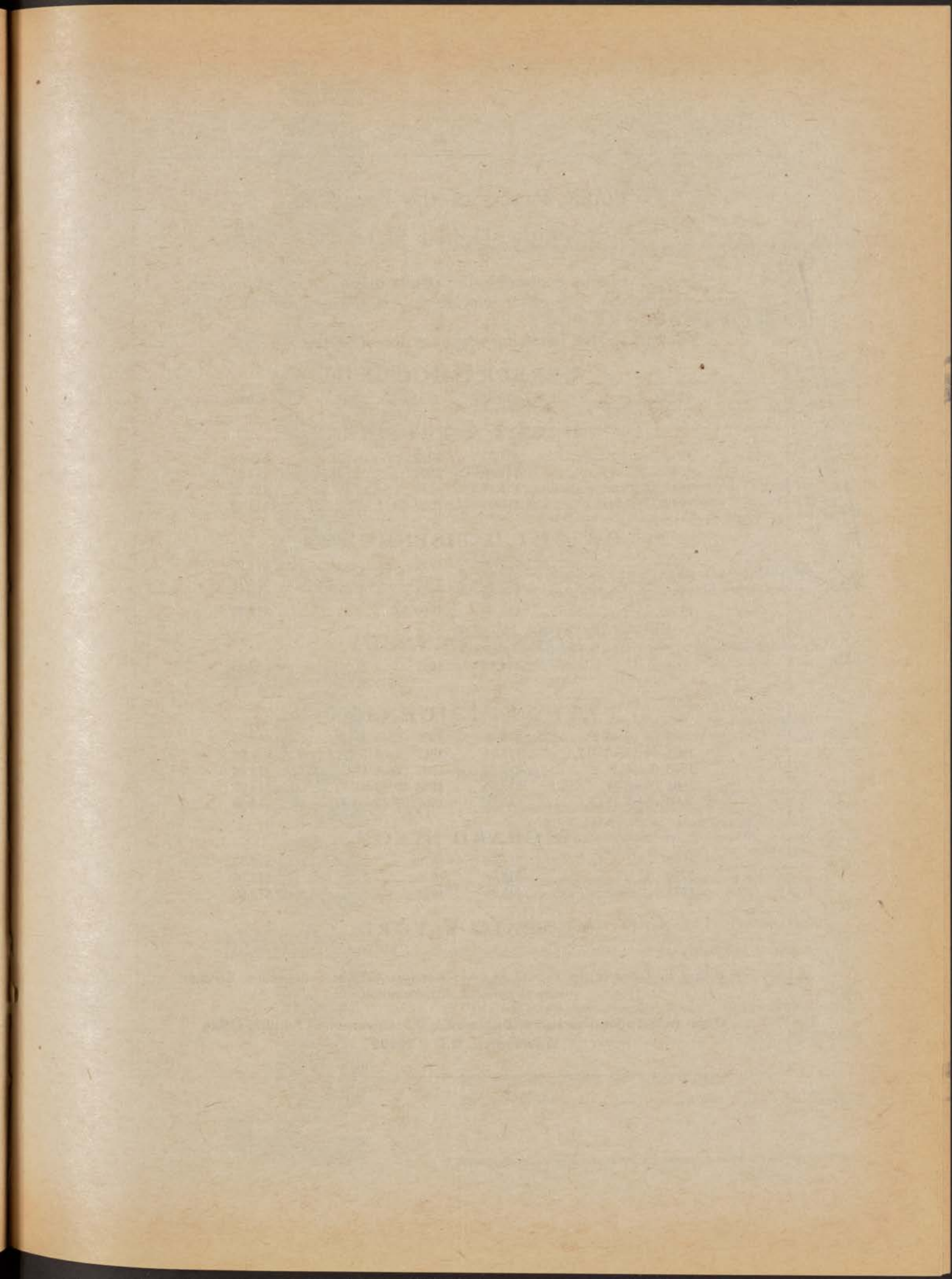
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